Evidence in the Case of Kissory Chand Mitra ~~D/77~~ I/77

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Evidence in the case
of
Kissory Chand Mittra

THE HONORABLE F. J. HALLIDAY,

Lieutenant-Governor of Bengal,

ALIPORE.

Dated Calcutta, the 19th October, 1858.

SIR,

In pursuance of the Commission addressed to us by your Honor, under date the 16th of September 1858, and in accordance with Section XXI. Act XXXVII. 1850, we have the honor to report as follows:—

2. We met in the Calcutta Police Office, on the 28th and 30th of September, and on the 1st, 2nd, 8th and 9th of October 1858, for the purpose of inquiring into the truth of certain imputations of misbehaviour against Kissory Chand Mittra, a Magistrate of Calcutta. Mr. Graham conducted the prosecution. Mr. Newmarch appeared for the accused, who was present in person, throughout the inquiry.

3. We annex notes of the oral evidence given before us; and also the written defence recorded, after being openly read; as required by Section XV. of Act XXXVII. 1850. We also forward for your Honor's inspection, the Police Defaulter's Book (marked A.), the Magistrate's Case Book (marked B.), the Police Commissioner's Report Book (marked C.), and the Exhibits D, E, F, G, G1, H, and I, also J, K, L (in Book B), M, N, O, and P.

4. We proceed to record our opinion upon each of the articles of charge separately, as required by Section XXI. of the Act.

5. With reference to the 1st article of charge—

It is proved and admitted, that Lieutenant Milligan charged his servant, Abdool Ruheem, with stealing Rupees fifty, and that the case was brought before the Magistrate Kissory Chand Mittra.

We are of opinion that the evidence given in that case showed plainly that Abdool Ruheem was guilty, and he admitted the facts charged.

The case was one of larceny at Common Law, because the money, at the time it was taken, must be deemed to have been in the possession of the Master; the possession of the servant, in such a case, being the possession of the Master.

We find that the Magistrate simply acquitted Abdool Ruheem; and we are of opinion, that the said Abdool should have been convicted.

We consider it neither proper nor just in a Magistrate to acquit a prisoner, who ought to be convicted.

We therefore find the Magistrate, Kissory Chand Mittra, guilty of the 1st article of charge.

6. We proceed to the 2nd article of charge.

It is in evidence, that the case of Lieut. Milligan *versus* Abdool was decided by the Native Magistrate on the 12th of June 1858; that, in the ordinary course of business, it was reported to Mr. Wauchope, that the said Abdool had been acquitted; that, at the usual preliminary inquiry by Mr. Wauchope, it had appeared to him that Abdool was guilty; that, accordingly, on the next Office-day after Abdool's acquittal, (*i. e.* on the 14th June,) inquiries were made by Mr. Wauchope, as to the grounds of the acquittal; that the result of these inquiries was not considered satisfactory by Mr. Wauchope, the Police Commissioner, and by Mr. Roberts, the Deputy Commissioner; that, accordingly, on the 15th of June, when Mr. Wauchope and Mr. Roberts had the Magistrate's Case Book before them, they turned to Milligan's case; that, with the express object of ascertaining the grounds of the decision, they read the whole case in the said Case Book "over and over again," paying particular attention to it; that there was, on the said 15th of June, nothing in the depositions to show why Abdool had been acquitted; that Mr. Wauchope "considered the decision most extraordinary;" that, therefore, he called on the Magistrate to supply him with copies of the depositions; that his object in so doing was to bring the matter to the notice of Government; that the Magistrate, along with his letter E, No. 45, dated 18th of June 1858, forwarded to Mr. Wauchope exhibit F, purporting to "be copies of the required depositions;" that, on reading exhibit F, Mr. Wauchope at once detected "passages that he was "certain he had never seen in the Case Book on the 15th of June; that had "those passages been in the Case Book on that date, he must have seen and "remembered them;" that, then and there, and without seeing the Case Book a second time, Mr. Wauchope underscored, with red ink, those passages, in exhibit F, which he had not seen in the Case Book on the 15th of June; that Mr. Roberts is also positive that there are, in exhibit F, passages which were not in the Case Book when he saw it on the 15th of June; that two or three days subsequently to the receipt of exhibit F, and after underlining the said passages therein, Mr. Wauchope again inspected the Case Book, and convinced himself that his memory had not deceived him; that, on the 15th of June, the depositions in the Case Book "were clearly written out, and there were then no alterations or interpolations to call for particular remark;" that there now are in the said depositions in the Case Book, many alterations and interpolations, corresponding exactly with those passages underlined by Mr. Wauchope, in exhibit F, solely from his recollection of the Case Book, as he had seen it on the 15th of June; and that these alterations and interpolations in the Case Book are admitted to be in the hand-writing of the Magistrate, Kissory Chand Mittra, who has declined to avail himself of the opportunity offered him to give evidence and explain the circumstances under which the said alterations and interpolations were made.

For the defence we have no evidence whatever; but we are virtually asked to ignore the whole evidence in the case, and to substitute mere conjectures of improbable possibilities.

This we cannot do. We consider the evidence of Mr. Wauchope, and that of Mr. Roberts, to be entirely trust-worthy, and in every respect satisfactory.

We cannot admit it to be of the slightest consequence, that Mr. Wauchope did not consider it necessary, in his letter to Government, to name Mr. Roberts as a witness to prove the truth of assertions, which he never supposed would be formally investigated.

Nor can we admit that, "if in the Case Book, as it now stands, there appear "alterations and interpolations other than those sworn to by the witnesses, the "same existed before the 15th June."

For we do not find the witnesses making any such admission. Though they have sworn only to those interpolations and alterations of which they are positively certain, they do not swear that, besides these, there were none others, on the 15th of June.

Nor can we admit it to be probable, (as suggested in defence) that "Mr. "Wauchope's reiterated perusal (of Milligan's case, on the 15th of June) "had no existence, except in his imagination only."

Or, that Mr. Wauchope and Mr. Roberts "are now much deceived by "memory, warped by the frequent comparing of notes, as to what they "represent to have been the minute care, with which the Case Book was "perused by them in the first instance."

It is impossible to accept such conjectures as these, in the face of the clear, distinct evidence of such witnesses as Mr. Wauchope and Mr. Roberts; and we accordingly have no hesitation in coming to the conclusion, that the Magistrate, Kissory Chand Mittra, "having acquitted Abdool Ruheem, after-"wards and between the 12th and 18th days of June 1858, did, after he had "signed the entry of the case in the Case Book, tamper with, and alter the "said entry."

We proceed to consider the actual words, which the said Magistrate did thus alter and interpolate.

1*st*. With respect to the words, "*in an excited state of mind.*"

Mr. Wauchope swears that these words were not in the Case Book, on the 15th June. His evidence to this fact is very strongly corroborated by his having underlined the said words, in exhibit F, solely from his recollection of the Case Book, and before he had seen it a second time. Still further corroboration is afforded by the present state of the Case Book; showing undeniably that these words have been interpolated; whereas, on the 15th of June, there were no interpolations to call for particular remark.

In defence, it is suggested "that the words '*in an excited state of mind*' "are necessary to the coherence of the text; and that, without those words, "there would be nothing to lead to the fact stated in the next sentence; "viz. my suspicion being aroused, &c."

But we observe that the entire record of the case, in the Magistrate's hand-writing, is in such a disgraceful state, that no argument of this sort can be allowed any weight. Moreover, we are by no means of opinion, that the words alluded to, are necessary to the coherence of the text, even as it now stands.

2*nd*. With regard to the words, "*I asked him for my money, he said he had spent the silver.*"

We observe that these words also were underlined by Mr. Wauchope in exhibit F, solely from his recollection of the Case Book on the 15th of June, and before he had seen it a second time. The Case Book itself shows undeniably that these words have been interpolated; and, in such a manner, that the

words, "*the sitter*," are barely legible. Had this been the case on the 15th of June, it seems certain that Mr. Wauchope would not have forgotten the fact.

Regarding the words, "*he said this without a moment's hesitation*," we have the positive evidence of Mr. Wauchope; supported by that of Mr. Roberts; and strongly corroborated by the underlines in exhibit F, and by the Case Book itself, which shows clearly that the said words have been interpolated, at a different time and angle from the other writing in the case.

3rd. Respecting the words, "*I am very young, and did not know what* "*I was about*;" we have the evidence of Mr. Wauchope, who declares that "whenever he read those words," in exhibit F, "he knew perfectly well that "he had never seen them before" (*i. e.* on the 15th of June). Mr. Wauchope adds that, "had these words been in the proceedings, he would certainly not have "sent for the copy of the proceedings."

Further, Mr. Roberts positively swears that "these words, *I am very young and did not know what I was about*, have been inserted; they were not in the Case Book on the 15th of June."

Further, we have the evidence of York, the Police Inspector, who was present, gave evidence in Milligan's case, and remained in Court the whole time of the trial. He says, "I am quite sure the prisoner did not say any thing about being very young."

All this evidence is strongly corroborated by Mr. Wauchope's red line under the said words, in exhibit F, and by the appearance of the words in the Case Book itself.

4th. We now come to the words "*warned and*," interpolated in the minute of the judgment, before the word "*acquitted*."

Regarding these words we have the evidence of Mr. Wauchope, who swears that on the 15th of June, when he examined the Case Book, he "paid particular attention to the sentence entered," in Milligan's case, "which "was simply acquitted."

On receiving exhibit F, from the Magistrate, Mr. Wauchope's "eye was "at once caught by these words, *warned and acquitted*, and he underlined "them then and there." "The words struck him as very strange, and it "seemed to him a most extraordinary verdict."

Mr. Roberts also positively swears that, "the ending of the case, just "before the Magistrate's signature was, on the 15th of June, when he saw "it, simply *acquitted*." Mr. Roberts adds; "I now find the words *warned* "*and*," (before the word "*acquitted*,") which words "were not there on the "15th of June."

This evidence is supported by that of Wilkie, the Clerk, to whom the book was brought after the trial; and who, on oath, says; "I don't think that "ending appears to be in the same state as it was when the book was brought "to me, at the close of the trial. I don't think the words "*warned and*" "were in this Case Book at the time it was returned to me" (after the trial). "It would have struck me as remarkable had I observed these words; be-"cause it is generally *warned and discharged*, and not *warned and acquitted*."

It appears further, from the evidence of Moore and York, the Police Inspectors present and paying attention throughout the hearing of the case, that the prisoner (Abdool) was simply acquitted, and that the Magistrate "did not speak one word of warning to him." Although the witness Weskin swears that a warning *was* given, we consider his evidence of no weight.

The evidence of Messrs. Wauchope, Roberts, Wilkie, Moore and York, regarding the words "*warned and*," is strongly corroborated by the red lines in exhibit F; by the state of the Case Book itself, which shows beyond dispute that the words "*warned and*" could not have been written at the same time as the word "*acquitted;*" and by the fact that the Police Inspector, present at the trial for the express purpose of reporting the result, did actually, the morning after the trial, enter that result, in the Police Commissioner's Report Book, as simply "acquitted."

In our opinion, had the Case Book on the 15th of June shown the verdict "*warned and acquitted*," such a remarkably expressed verdict must have attracted the particular attention and fixed itself in the memory of both Mr. Wauchope and Mr. Roberts, who have long been in the daily habit of hearing ordinary verdicts in Police cases. We feel that, had we heard or read this verdict, we could not have forgotten it.

In defence, it is urged that, "great Judges have been in the habit, "after a prisoner has been acquitted by the Jury, to warn the prisoner "before allowing him to quit the dock."

This, however, is simply to remind us that prisoners are occasionally acquitted, and then warned. Granting this, we still consider that a formal verdict of "*warned and acquitted*" recorded in a most remarkable manner, in two dissimilar descriptions of writing, could not have failed to impress itself vividly in the memory of such men as Messrs. Wauchope and Roberts.

We therefore consider it certain that the words "*warned and*" have been interpolated; and as those words are confessedly in the Magistrate's handwriting, we have not the smallest doubt that the Magistrate, Kissory Chand Mittra, did, between the 12th and 18th of June, tamper with and alter the minute of his judgment in Milligan's case.

We now proceed to consider whether this was done "*wrongfully;*" as charged.

This word "*wrongfully*," appears to us to be the essence of the second article of charge. For, under certain circumstances, it might not be culpable to rectify a public record; but, under all circumstances, to falsify such a record must be highly reprehensible.

We have it in evidence that the Police Inspectors, Moore and York, were present throughout the hearing of Milligan's case, to which they paid much attention; one being a witness in the case, and the other specially watching for the decision, it being his duty to enter the result in the Police Commissioner's Report Book. Both these Inspectors positively swear that they did not hear one word of warning addressed to the prisoner by the Magistrate, and that, had the Magistrate warned the prisoner, they must have heard the warning.

In direct contradiction of their evidence, we have that of Weskin. On the application of the Counsel for the defence, this witness was called by us. It subsequently however appeared, that he had been subpœnaed for the defence.

Weskin states that he was present during the hearing of Milligan's case; he was in no way concerned in the case, but happened to be at the Police Office and heard the trial; he admits that he "had forgotten all about the case," till Mr. Wauchope called it to his mind in July or August; (the exact date was the 21st of July, more than five weeks after the trial.) Notwithstanding he had "forgotten all about the case," till asked a few questions regarding it on the 21st of July, he, on the 2nd of October, or 16 weeks after the trial, swore to minute details of that trial, and even to the identical 27 words of indifferent Hindoostani, addressed by the Magistrate as a warning to the prisoner Abdool.

We consider it utterly impossible that a warning of such length could have been given, without its being heard by Moore and York; both of whom were interested in, and had duties to perform in connection with the case, which, and more particularly the verdict, was far more likely to attract their attention than that of Weskin, who had nothing whatever to do with the matter, and was merely a casual spectator.

We further observe, that the evidence of Inspectors Moore and York was given in a remarkably straightforward, satisfactory, and convincing manner; and we find in their depositions unmistakeable internal evidence of truth. The disagreements in their evidence relate to circumstances on which variations were to be expected, after the lapse of many weeks since the trial of Milligan's case, and such discrepancies are indirect confirmations.

We find Weskin's evidence contradicted, not only by that of the two Inspectors, Moore and York, but on many points by that of Mr. Wauchope also. The manner in which Weskin gave his evidence was moreover far from satisfactory, and we have no hesitation in pronouncing it utterly unworthy of credit.

As to the motive with which the Magistrate made the interpolations and alterations, we consider that it could have been none other than the motive charged.

We have not the least doubt that, owing to an imaginary legal difficulty, the Magistrate simply acquitted Abdool; but Weskin's argument* had raised a doubt in the Magistrate's mind, whether Abdool should not have been convicted, under the Breach of Trust Act. When copies of the depositions were called for by Mr. Wauchope, this doubt presented itself more strongly, and the Magistrate, unaware† that Mr. Wauchope had seen the Case Book, and fearing blame for the erroneous acquittal, altered the entry, so as to make it appear that, on account of the prisoner's youth and other extenuating circumstances, he had been warned and discharged, and not actually acquitted.

* See pages 22 & 28 of the notes of Evidence.

† In his letter to Government No. 55, dated 7th July 1858, (exhibit H) the Magistrate says, "I am assured that he (Mr Wauchope) never obtained a sight of the books"

We accordingly find the Magistrate, Kissory Chand Mittra, guilty of the 2nd article of charge.

7. It follows that we find him also guilty of the 3rd article of charge.

8. We now proceed to the 4th article of charge.

It is in evidence, that Sumboonath Dhur charged Deedar Bux with stealing firewood worth half an anna ; (*not*, " one rupee and two annas," as in the charge) ; that the case was disposed of by the Magistrate, Kissory Chand Mittra ; that Chundernath Dhur was a material witness ; that he was in attendance at the trial ; that he was not examined ; that Deedar Bux was acquitted ; and that the prosecutor, Sumboonath Dhur, was ordered by the Magistrate to pay ten Rupees by way of amends to the said Deedar Bux.

We are not prepared to pronounce that the charge of theft was true. But we consider that it was most improper and unjust to mulct the prosecutor, without hearing the evidence of his material witness. Accordingly, with the exception of the words "*worth one rupee and two annas*," we find the Magistrate guilty of the 1th article of charge.

9. With regard to the 5th article of charge.

We need not repeat the evidence, regarding the inspection of the Case Book by Messrs. Wauchope and Roberts on the 15th June, and regarding Mr. Wauchope's receipt of exhibit F, and at once underlining certain passages therein, solely from memory, and before seeing the said Case Book a second time.

Mr. Wauchope distinctly states, that when he saw the Case Book on the 15th of June, the words, "*prosecutor in fact once threatened to drive him out of his homestead*" were not there ; but he found them and underlined them in exhibit F ; being "perfectly certain, that if this distinct fact had been in "the Case Book, he should have remembered it."

This evidence is supported by that of Mr. Roberts. He "does not recollect "these words being in the Case Book on the 15th of June, though he has a "distinct recollection that there was something in the evidence about a threat, "or a variance, or a quarrel."

On examining the Case Book we find that, besides the words, "*prosecutor* "*in fact once threatened to drive him out of his homestead*," there are the words, "*prosecutor often quarrels with defendant for cooking beef.*" This proves the correctness of Mr. Roberts' memory, and the reliable nature of his evidence.

The evidence of Messrs. Wauchope and Roberts is strongly corroborated by the red lines in exhibit F, and by the Case Book itself, which shows that the words, "*prosecutor in fact once threatened to drive him out of his home-* "*stead*," have been interpolated at a different time and angle from the contiguous writing in the case.

This interpolation is admitted to be in the Magistrate's hand-writing, and we consider that, in making it, he could have been actuated by no other motive than that charged.

Accordingly, we find the Magistrate Kissory Chand Mittra, guilty of the 5th article of charge.

10. It follows that we find the said Magistrate guilty of the 6th article of charge.

11. In conclusion, we would particularly call attention to the fact, that the Magistrate, Kissory Chand Mittra, was invited to come forward as a witness, and explain the circumstances under which he had made the alterations and interpolations, in the record of the cases of Lieut. Milligan and Sumboonath Dhur. But he declined to avail himself of this opportunity to clear himself; and we observe it stated in his defence, that "he has no particular recollection "as to the time and manner in which the additional words were entered, and "therefore does not attempt to give a statement explaining in fact the differ-"ence between the two styles of writing, both avowedly made by his own "hands."

12. We regret to say that we consider this alleged loss of memory extremely improbable, under the circumstances of the case; and we are of opinion, that the Magistrate, by declining the invitation to give an explanation on oath, has, to a certain extent, furnished corroboration of the statements of the witnesses for the prosecution.

We have the honor to be,

SIR,

Your most obedient Servants,

(Signed) HAMILTON FERGUSSON,
" H. PELLY HINDE,
" HURU CHUNDER GHOSE,
Commissioners.

NOTE BY MR. HINDE AND HURU CHUNDER GHOSE *ONLY.*

Having discharged our duties as Commissioners, and recorded our opinion upon the various points submitted to us, we are induced to solicit His Honor's consideration of the long services of Kissory Chand Mittra. We think the alterations and interpolations when made were intended to rectify what afterwards appeared to the Magistrate as an error in judgment. His subsequent denial of the fact, *may perhaps*, have proceeded more from thoughtless indiscretion than with a view wilfully to deceive. We therefore recommend him to the lenient consideration of His Honor.

(Signed) H. PELLY HINDE.
" HURU CHUNDER GHOSE.

Evidence in the Case of Kissory Chand Mittra.

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UNDER Section XVIII. of Act XXXVII. 1850, the following Notes of evidence were taken by the Commissioners appointed under the said Act, to enquire into the truth of certain imputations of misbehaviour against Kissory Chand Mittra, a Magistrate of the Town of Calcutta, and a person in the service of the East India Company, not removeable from his Office without the sanction of the Government of Bengal.

At 11 A. M., on 28th September 1858, the Commissioners met in the Calcutta Police Office.

MR. GRAHAM appeared for the prosecution.

MR. NEWMARCH for the defence.

One of the Commissioners, Mr. Hinde, opened the proceedings, by reading the Commission, dated Fort William, 16th September 1858, and signed by the Lieutenant Governor of Bengal.

Under Section XI. of the Act, the prosecutor then exhibited the articles of charge to the Commissioners. The said articles of charge were openly read, and the accused was required to plead to each of them.

MR. NEWMARCH objected to the first and fourth charges, on the grounds that they are unconstitutional, and impute no offence for which a Magistrate can be brought to trial.

Having made this protest, the accused entered a plea of not guilty to each charge.

Under Section XI. of the Act, the said pleas were forthwith recorded, with the articles of charge, as follows:

ARTICLES OF CHARGE against Kissory Chand Mittra, Esquire, a Magistrate of Police, for the Town of Calcutta, to be exhibited before Hew Dalrymple Hamilton Fergusson, Esquire, Magistrate of the Twenty-four Pergunnahs, Henry Pelly Hinde, Esquire, Barrister at Law, and Baboo Hurro Chunder Ghose, a Judge of the Calcutta Court of Small Causes, the Commissioners appointed by His Honor, Frederick James Halliday, Esquire, Lieutenant Governor of Bengal, for the purpose of making a formal and public inquiry into the truth of the said Charges.

1. That in a case brought before the said Kissory Chand Mittra, as such Magistrate as aforesaid, wherein one Abdool Ruheem was charged before him with stealing Company's Rupees Fifty, of his master, Lieutenant William J. L. Milligan, and wherein the evidence shewed plainly that the prisoner was guilty, and the prisoner admitted the facts charged. He the said Kissory Chand Mittra, as such Magistrate, as aforesaid, on the twelfth day of June 1858, improperly and unjustly acquitted the prisoner.

PLEA.
Not Guilty.

2. That the said Kissory Chand Mittra, having acquitted the said Abdool Ruheem in the first Charge mentioned, afterwards and between the 12th and 18th days of June 1858, for the purpose of making it appear that he the said Kissory Chand Mittra had, on account of the prisoner's youth and other extenuating circumstances, warned and discharged him, and had not actually acquitted, did, after he had signed the entry of the said case in the Case Book, wherein he had taken down the evidence and recorded the acquittal, being the only record kept of the said case, *wrongfully* tamper with and alter the said entry. PLEA Not Guilty

1*st*. By interpolating in the deposition of the prosecutor certain words not entered therein at the time of his examination, viz. after the words, " I found the prisoner running down" the words " in an excited state of mind," and in another part of the said deposition the words, " I asked him for my money—he said he had spent the silver—he said this without a moment's hesitation." PLEA. Not Guilty.

2*nd*. By interpolating in the examination of the prisoner certain words not entered therein at the time of the examination, viz. " I am very young, and did not know what I was about." PLEA. Not Guilty

3*rd*. By interpolating in the minute of his judgment the words " warned and" before the word " acquitted." PLEA. Not Guilty

3. That the said Kissory Chand Mittra, after having made the alterations in the said second charge mentioned, having been requested by the Secretary to the Government of Bengal to submit any explanation that he might wish to offer respecting the same for the information of the Lieutenant-Governor of Bengal, did, in a letter dated the 7th day of July 1858, written by him to the said Secretary, with the intention of making it appear that he had not pronounced, and had not intended to pronounce, an acquittal, falsely pretend and allege that he had warned and discharged the prisoner, but that in the hurry of business he had written the words " warned and acquitted" in the said Case Book instead of " warned and discharged" as he had intended. Whereas in fact he had pronounced, and intended to pronounce, an acquittal, and had written, in recording his judgment, only the word "acquitted." PLEA Not Guilty.

4. That in a case brought before the said Kissory Chand Mittra, as such Magistrate as aforesaid, wherein one Shaik Deedar Bux was charged with stealing certain firewood, worth one rupee and two annas, of one Sumbonath Dhur, and wherein it appeared from the evidence of the said Sumbonath Dhur, that one Chundernath Dhur had called his attention to the theft that was going on in his shop, and was (so far as it appeared from the said evidence) the only eye-witness besides the prosecutor to the alleged theft. He the said Kissory Chand Mittra, on the 14th day of June 1858, without examining the said Chundernath Dhur, although he was present as a witness at the

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Police Office, and without ascertaining whether there was sufficient ground for making the said charge, acquitted the said Shaik Deedar Bux, and improperly and unjustly awarded that the said Sumbonath Dhur should pay the sum of ten rupees by way of amends to the said Shaik Deedar Bux.

5. That the said Kissory Chand Mittra having acquitted the said Shaik Deedar Bux, and awarded payment by the said Sumbonath Dhur, as in the fourth charge mentioned, afterwards, and between the 14th and 18th days of June 1858, for the purpose of making it appear more strongly than it did from the original deposition, that the said Sumbonath Dhur was actuated by malice in making the said charge of theft, and that the same was unfounded, did, after he had signed the entry in the said Case Book, in which he took down the said case, being the only record kept thereof, improperly tamper with and alter the said entry by interpolating in the deposition of one Lall Mohun, a witness for the defendant, the words "Prosecutor in "fact once threatened to drive him (*i. e.*, the defendant) out "of his homestead."

PLEA Not Guilty

6. That the said Kissory Chand Mittra, when called on for explanation by the Government of Bengal, respecting the alterations in the said Case Book, in the second and fifth charges mentioned, did, on the 7th July 1858, in the letter to the Secretary to the Government of Bengal, mentioned in the third charge, falsely deny that he had altered or added to the entries in the said Book since it was originally signed by him, whereas in fact he had, after the said Book was signed by him, altered and added to the entries in the instances in the second and fifth charges mentioned.

PLEA Not Guilty

Mr. Graham then addressed the Commissioners, in explanation of the articles of charge, and of the evidence to be brought forward to prove them, but under Section XII. of the Act, Mr. Graham's address was not recorded.

During *Mr. Graham's* address, all the witnesses in the case were desired to withdraw from the Court. This step was taken on the application of Mr. Newmarch, who explained that he did not wish it to be inferred, that he feared the witnesses would make false statements, but, as they would speak entirely from memory, it would be advisable that each should trust entirely to his own recollections. As required by Section XVII. of the Act, the oath to each witness was administered by one of the Commissioners, viz. Mr. Hinde.

Samuel Wauchope sworn and examined by *Mr. Graham*.—I am Commissioner of Police of Calcutta, the defendant is Magistrate of Northern Division, Calcutta. Mr. Hume was absent on sick leave in June last, and the duties of his Office were carried on by the defendant. On the 15th June I remember the case of Sumboonath Dhur being brought to my attention. It was brought to my notice by the circumstance of a chokeedar named Khoda Bux having been brought before me for giving false evidence in the said case.

In some cases where there could be no doubt, I would in such a matter pass sentence at once—if there was any doubt I would send for the Magistrate's Case Book. In the Police Defaulter's Book (A) such cases would ordinarily be entered. In the instance of Khoda Bux I asked the Officer who had brought up the chokeedar what he had stated falsely, before the Magistrate. He seemed to have said much as he had told me before, that is, at the preliminary hearing before the case went up to the Magistrate. Wishing to see the depositions, the book was sent for by an Officer of the Executive Police. It was brought. I have since learnt that the person who brought it was Mr. Purney. This is the book (marked B). I examined the case of Sumboonath at page 34. Mr. Roberts, the Deputy Commissioner, was sitting with me at the time. I read the case over once to myself, and not being able to ascertain why the prisoner had been acquitted, or the complainant fined, or the chokeedar brought up before me for false evidence, I read the case out aloud to Mr. Roberts, and it was then discovered that the evidence of Chundernath Dhur, the principal witness, had not been taken. This Chundernath was the man who had first reported the theft. Mr. Roberts and I again read the case over, in order to see if we could find the reason of the Magistrate's decision, and afterwards Mr. Roberts got up and stood to look over the book. I had known something of the case from preparatory examination of the witnesses before it was sent up to the Magistrate. I must have read over the case at least three times. The previous day, (14th June) when hearing reports, I had looked back to the result of the cases sent up to the Magistrate on the 12th (Saturday) and I saw entered in my report book (marked C) in the case of Lieut. Milligan, prosecutor, and Sheik Abdool Ruheem and another, charged with theft of cash and a Bank of Bengal Note for Rs. 25, that the accused had been entered in my Report Book as acquitted. (It is the custom for the Officer in charge of the case to enter, in the ordinary course of his duties, the result of each case, in my Report Book). As it had seemed to me on the preliminary enquiry a very clear case against Lieut. Milligan's (the prosecutor's) servant, I wished to see the grounds of the acquittal; I therefore turned back to the case in the Magistrate's Case Book. I read it over and over again (at page 23). I read the whole case. I paid particular attention to the sentence entered, which was simply acquitted, and there was nothing in the depositions to show why that decision had been come to. Mr. Roberts was there at the time. He also read over the case. He was sitting by me at the time. On the 16th June I wrote a letter to the Defendant, of which this is a copy, (produced in original and marked D) By the concluding paragraph in my said letter (marked D.) I mean as follows: It had appeared to me from what the Police had told me, that the case was clear, and I wanted to see whether my Police Officers had told me truth or falsehood. A copy of the depositions, (marked F) was sent me along with the Magistrate's letter (marked E). I cannot be positive when it was that I received that letter. Very likely

on the 18th of June, possibly on the 19th. I read the letter and the depositions. I glanced over them, and my eye was at once caught by the words "*warned and acquitted.*" On looking back (into the copy of the depositions) I saw the words, "*I am very young, and did not know what I was about.*" I knew perfectly well that I had never seen these words before. I first saw the words "*warned and;*" then I saw the other words. I put red lines under the passages. These were the passages that I was certain I had never seen in the Case Book, and which I must have seen if they had been there, and must have remembered too. I had reasons connected with it. On going back, I saw several other passages which seemed to alter the case, and give me a different impression of it from what I had had before. The words "*in an excited state of mind,*" I marked them; also the words "*he said this without a moment's hesitation*" I marked those also; these I can speak to positively, as having marked then and there. This (marked F.) I believe to be the copy of the depositions sent to Government.

In the other case (Sumboonath Dhur's) I marked the words "*prosecutor in fact once threatened to drive him out of his homestead.*" I then and there marked those words. I was perfectly certain that if this distinct fact (prosecutor having threatened to drive him out of his homestead) had been in the case Book, I should have remembered it; the words had apparently been added, to give a colouring to the decision: that is my opinion. In consequence of the investigation, I prepared a letter to Government on the following morning This is the said letter (marked G.) After the receipt of the copy of the depositions, and before the despatch of my letter G., I again saw the Case Book. I believe I directed one of the Executive Police to fetch it. It occurred to me that, in sending this letter, I made a very grave charge against the Magistrate, and it appeared to me as just as well that I should know whether my memory was altogether wrong or not. I again examined the Case Book before I sent the letter G. In reference to paragraph 4 of the said letter G., I have to say that the said letter was written before I had seen the Case Book a second time; and as it never occurred to me that the Magistrate would deny that there were interpolations, seeing them so palpable, it seemed to me of the very slightest importance to add the fact that the alterations appeared to have been made in the book, and that I had seen it a second time. The reason I sent for the book was to satisfy myself that I was right. If this Case Book B. had (on the 15th June, in Milligan's case) contained the words "*warned and*"—"*I am very young and did not know what I was about;*" had these words, I say, been in the proceedings, I would certainly not have sent for the copy of the proceedings, because I would have considered that the boy had been *convicted;* but, in consequence of his youth and excited state, he had only been warned That would have been my impression. I never heard of *warned and* "*acquitted*" in my life before: these words certainly struck me as very strange. In cases sent up to the Sessions, the deposi-

tions are taken on the printed forms. But in all other cases, this Case Book (B.) is the only record that I know of. A copy of the defendant's answer to the Government was sent to me, (original admitted, and marked H.) This is my rejoinder, dated 27th July 1858, (admitted, and marked I.) In the case of Sumboonath Dhur, had I seen the Case Book, even as it now stands, I would have considered the decision wrong, although I should not have been so much surprised, as I was, when I first saw the book. The case was dismissed, the prosecutor fined 10 rupees, and the chokeedar ordered to be brought up before me for punishment; and yet Chundernauth, the principal witness in the case, had not been examined. I obtained the Case Book in the ordinary course. I am not aware there was any objection to my seeing it. Facilities are granted to me for looking over the Case Books, in case of complaints against the Police. In such cases, the Magistrate is always too happy to send it. It is a book kept in charge of the Clerk to the Magistrate.

Cross-examined by Mr. Newmarch.—When I wish to see the Case Book, I usually ask the Police Officer to bring me the book, and it is understood that he asks the Magistrate for it: this is done to save time in writing official letters.

In the present instance, I asked for the book, and the book was brought. I never thought whether the Magistrate had been asked for it or not.

When I wrote my letter of the 16th of June to the Magistrate, I did not see any necessity for mentioning to him that I had seen the Case Book; I supposed he knew it.

In reference to the concluding passage of my letter D, and when using the words—"some very extraordinary misrepresentation must have been made to me," I imagined that the Magistrate could throw some light on the matter of the acquittal, which I had been unable to obtain from a perusal of the depositions in the Case Book.

Q.—Did it not occur to you that the readiest way would have been, to have asked the Magistrate for the explanation you required?

A.—I have no power to call on the Magistrate for any explanation.

Q.—What was your object in calling for the copies?

A.—My object was, that if, in the answer from the Magistrate, or upon any further enquiries that I might make, I was not further satisfied regarding the propriety of the decisions, (which, as I had seen them, appeared most extraordinary,) I should bring the matter to the notice of Government. If not satisfied, my object was that I might send the copies up to Government. Unless satisfied by further enquiry and explanation, I contemplated a complaint to Government, in respect of these decisions. I had no power to call for an explanation, but if the Magistrate had given one, I would have been happy to receive it. In the case of Milligan, I thought that the case must either have been wrongly

decided, or that my Police must have grossly deceived me; and the Magistrate might have shown me that the Police had deceived me altogether. Mr. Roberts was with me when I first perused these cases. I cannot say when I next had any communications with Mr. Roberts, on the subject of these cases. When I received the Magistrate's letter, in which he denied the truth of my charges, I have little doubt I had some communication with Mr. Roberts, but I cannot recollect exactly. I have no doubt that, within a fortnight after my receipt of the letter, I told Mr. Roberts that the Magistrate had denied the interpolations. I don't recollect whether Mr. Roberts said anything as to his remembrance of the interpolations. Very probably, but I don't recollect. When I wrote the letter of the 27th July to Government, it did occur to me that the corroboration of Mr. Roberts would be equally as important as that of Mr. Weskin. I have no doubt that, before I wrote that letter of the 27th of July, I had ascertained that Mr. Roberts could corroborate me. It was not a formal charge that I was then bringing; and I did not think it necessary to mention all the evidence, and did not therefore mention Mr. Roberts, as well as Mr. Weskin. I merely mentioned the prominent features. *(This was in answer to a question why Mr. Roberts was not named in the said letter.)* There was Inspector York and other persons connected with the case, whose names also I did not mention in the said letter. The Inspector referred to in paragraph 11th of the letter is, I believe, Inspector Moore. I cannot recollect whether I called Mr. Roberts' attention to the particular passages which had been interpolated. I have spoken often to him; so often, on the matter, that I know all he knows, and *vice versâ;* but I don't think we ever had any documents by us at the time. Before my letter of 22nd June went in to Government, I had again inspected the Case Book. I was impressed with the gravity of the charge I was making against the Magistrate. There is a great difference in making alterations in depositions, at the time of writing them; and making them some days after. The Magistrate might be in a hurry and correct errors. All that the second sight of the Case Book showed me was, that there were interpolations and alterations, which I never for a moment supposed the Magistrate denied; but which alterations, in my belief, had been made since I first saw the book; and they were therefore alterations of the graver nature. My letter had been written, and I did not consider it of such very great importance to mention that there were alterations in the book, as appeared from my second inspection.

Q.—Did it not occur to you, that when you made the statement, which I shall now quote, viz.—" I have underlined " in red ink the additions which, as far as I can recollect, " have been made to the original depositions;" did it not occur to you that, if the book should then be called for, and it should then be found that these were the words, it would appear to be a very strong corroboration of your statement made, as though you had not seen the Case Book a second time?

A.—I don't think it ever occurred to me. My belief was that the Magistrate would not deny the interpolations; and had he not, there was an end of the matter.

Q.—After having made this statement, do you think the 4th, 6th, and 7th paras. of your letter of 27th July to be a candid statement?

A.—There is a great difference in the case before the Magistrate had denied the interpolations, and after he had done so.

Q.—When you wrote your letter of 27th July, did you recollect, that when you sent in your's of 22nd June, you had had a second inspection of the Case Book; and was it that inspection to which you alluded in the 4th paragraph, where you say, "*I have since seen the book;*" and again, in 7th paragraph "*I have lately had this Case Book again before me*"?

A.—I cannot say whether I then recollected.

Q.—Had you ever, after the 15th June, any inspection of the Case Book, except the one on the 21st (Monday)

A.—Certainly once, and perhaps oftener.

To Mr. Newmarch (continued).—I don't know whether any steps were taken for the custody of the Case Book, after I sent my letter, making the charges of interpolation. I conclude from this letter (N.) of Mr. Hume's, that it was on 11th August that the Case Book was sent to Government. I have seen it since, at the Government Office, with Mr. Mirfield. I don't think I looked at it when Mr. Graham was there. I did not assist in the preparation of the charges. I saw Mr. Graham twice, once at the Bengal Office, and again yesterday. I am still of the same opinion, and do now adhere to the statements made in my letter to Government of the 27th July, in the 4th and 6th paragraphs of which I stated, that, when I saw the Case Book, on the 15th June, the depositions of the two cases were clearly written out, and there were then no alterations or interpolations to call for particular remark. I think the decision in Milligan's case is against the evidence. On hearing the evidence, as it originally stood, (before interpolation), witness says, I considered it an extraordinary acquittal when I read the case over, and that the boy should have been convicted. That was my impression at the time. I formed my impression from what I had seen of the case in the Case Book, on the 15th June. Previous to sending in my letter G. of the 22nd June, I did satisfy myself by an inspection of the Book, that the statements made in the said letter were substantially correct.

I make no notes of the evidence given before me, preliminarily to sending a case before the Magistrates.

I made none of Chundernauth's evidence. I have no recollection of making any alteration in the draft of my letter of the 22nd June, after seeing the Case Book the second time. *(The draft of said letter was here put in by prosecutor and marked G. 1.)* When I have had the Case Book, I have always understood that application was made to the Magistrate for it. I

have not often had Mr. Hume's Case Book this year, because I don't often have cases of the kind occurring. If I were a Magistrate, I should be indignant at the book being given without my permission. I consider the Case Book a public record. I tell the Police Officers to bring the Case Book, and it is brought; I take no trouble about it. I had looked casually through the Case Book before writing my letter of the 27th July, but I had not done so *carefully*. I turned over the leaves and found no case interpolated like those I have mentioned. I never meant to say there were no clerical errors in any cases. Witness' attention is called to the alteration (marked J) at page 19 of the Case Book B, and dated 11th of June. Witness says the words interlined in this case of 11th June have an important bearing on the case; but I consider them and the other alterations in the same case to be mere clerical errors or omissions. Witness' attention was then drawn to the alteration marked K., at page 28, of Case Book B. Witness says, there is an error here. I call it a clerical error. Witness states that, in his opinion, there is a greater difference between the thin writing (marked K. at page 28, of book B.) and the other writing in that page, than there is in Sumboonath's case, (page 34 of book B) between the interpolation and the true writing; but the difference seems owing to the use of a different pen.

Witness states; after writing the draft G 1. of my letter G. of June 22nd, and under-scoring, with red ink, in the copies of the depositions, I cannot be sure whether I read over the whole of the case of Lieut. Milligan or not. My object in sending for the Case Book was in order to see that what I had written was correct. When I wrote my letter of 27th July, I considered Mr. Weskin's corroboration of my impression was very important; and when I spoke of the evidence of an independent gentleman, I referred to Mr. Weskin. The verdict "*warned and acquitted*" seems to me a very strange one—"*warned and discharged*," (with the evidence as it *now* appears) would not have appeared so strange. In my opinion "*warned and discharged*" is equivalent to a conviction; but that owing to circumstances, punishment was not awarded.

Q.—Is this the first time you have reported the defendant to Government?

A.—I find that in three instances I have brought the Magistrate's conduct to the notice of Government. On the 10th of January 1857, shortly after I became Commissioner of Police, I wrote to Government, requesting instructions as to whether I was responsible, in any degree, for the manner in which business might be performed by the Magistrates of Calcutta. Previously to that, I was Chief Magistrate, and no doubt responsible. On the 21st February 1857, I was informed, that though "in no way responsible for the manner in which "the Judicial business is performed by the Magistrates of "Calcutta, you have done no more than right in bringing to the "notice of Government, on the present occasion, what you

"consider to be instances of marked inefficiency on the part "of one of them." It having been considered right in that case, I considered it my duty to bring any future cases of the sort to the notice of Government.

Re-examined by Mr. Graham.—In taking proceedings I had not been actuated or influenced by any bad motives. I would have been wanting in my duty, if I had not reported the cases to Government. As to the other instances, I do not think there was any result. Mr. Roberts knew nothing more than what I did myself, but Mr. Weskin knew what had happened in the Magistrate's Office. In my letter to the Government I have not mentioned any one's evidence but my own, as to facts within my own knowledge. When I said, I looked over the Case Book *casually*, and not carefully, I did not refer to the two cases in question, which I had read over and over again. It certainly appears to me that in the Case Book B., the entry of 11th June (marked J. at page 19) is in the same writing, and entered at the very same time, as the other writing. As to the entry K. at page 28, of Book B. the words erased are "*defendant rescued that man,*" and in fact no alteration has been made at all, for the entry was "*the defendant rescued that man,*" and this is erased; and in the line below, there is written "*defendant rescued the prisoner.*" In point of fact then, there is no alteration. For the words "I made over the" are scratched out with the pen, but put in again just over the same words This must have been done at the time; but in Sumboonath Dhur's case, (page 34 of the book B.) it appears to me, from the angle of the writing, that the writing put in could not have been done at the time the depositions were written. I have no doubt whatever that I had written the draft of the letter G. dated 22nd of June 1858, before I saw the Case Book the second time. I was influenced by no unfair or improper motive in not mentioning, in my letter of the 22nd June, that I had seen the Case Book a second time.

Q.—*(By the Commissioner Hurro Chunder.)*—How did you know that Chundernath's evidence had not been taken?

A.—It appeared from the complainant's statement in the Case Book.

Q.—Are the Case Books ever considered by the Magistrates to be merely their own private note books?

A.—No. It is the Public record, and in fact the only record. In case of a writ of certiorari, a copy is sent up to the Supreme Court.

(As required by Section XVIII. *of the Act, the evidence was read aloud to the witness by whom it was given.)*

The Commissioners then adjourned at 4-40 P. M.

Second Day's Proceedings.

Thursday, 30th of September, 1858.

John Blessington Roberts, sworn by Mr. Hude—I am Deputy Commissioner of Police. On the 15th of June last my attention was directed, in the course of business, to a complaint against Khoda Bux, chokeedar, in the case of Sumboonath *versus* Deedar Bux. Superintendent Purney brought up before me the Defaulter's Book, at the instance of the Magistrate of the Northern Division, charging Khoda Bux aforesaid with giving false evidence. This is the book, marked A. On looking at the date, viz. 15th June, I find the charge made against the said Khoda Bux for giving false evidence. This case I marked with a cross, and I also marked similarly another case immediately preceding it. I marked it with a cross to show that in my opinion it was of sufficient importance to go before the Commissioner. He came in a few minutes after I had put the cross, and then he proceeded to the enquiry. I and Mr. Wauchope sit beside each other every morning, to take reports. I believe Mr Wauchope had been detained that morning either by a meeting of the Relief Fund, or of the Free School Committee. I thought if the charge against the chokeedar were true it involved the dismissal of the chokeedar, and therefore I brought it before the Commissioner. It was brought before him within five minutes of my putting that cross against it in the book. He then proceeded to investigate the charge in my presence. He sent a Superintendent to bring the Magistrate's Case Book. I have since learned that it was Superintendent Purney. I have known this course pursued very frequently before. On such occasions I myself have brought the book. I have never met with any difficulty in getting the book from the Magistrates. The book was brought down. This book, B. is it. Since the 15th of June last I have never seen that book till now. When we got the book we turned to the case of Sumboonath Dhur; and we read over together the evidence, as recorded by the Magistrate, with a view to see whether the chokeedar had made any statement at variance with that he had given to the Commissioner and myself the previous day, when the case was sent up for trial. My attention was particularly excited. I noticed that there was no variation between the statement made by the chokeedar before the Magistrate, and that he had previously made before us. I also could see no recorded reason (I speak according to my own judgment) or evidence that justified the release of the prisoner, or the fining of the prosecutor for preferring a false charge. I also observed that a material witness (to my mind) had not been examined. The statement made to me the day before was, that this witness, who had not been examined before the Magistrate, had first brought the theft to the notice of the chokeedar. I and Mr. Wauchope went over the case in the book and we talked about it,

with a view to see if we had overlooked anything upon which the Magistrate's opinion of the conduct of the chokeedar had been formed. There was another matter which occupied our attention in the book. On the 12th (I think) or 13th of June, a case had been sent up for trial, in which an Officer named Milligan, I think, had charged his servant with theft, and it had been reported (as usual, in all cases, after decision) the following day, that the prisoner (the servant) had been acquitted. Enquiries had been made by the Commissioner on the day following this decision, in order to find out why the servant had been acquitted. This was the reason *that* case was turned to when we had the Case Book before us on the 15th. On seeing Milligan's case, nothing attracted my attention, excepting that the servant was acquitted, in my opinion, against the evidence. I read through that case more than once. I made no general examination of the book, (witness looks at the case of Sumboonath, page 31 of book B, and says) on a general view of the case, there does not strike me to be any material difference from what I saw in June last. I recollect every sentence I see here perfectly, with the exception of one at the end, about which I am not quite clear; but my impression is, that I do not recollect a sentence at the end, the said sentence is,—"*the prosecutor in fact once threatened to drive him out of his homestead.*" I have a distinct recollection that there was something in the evidence about a threat or a variance, or a quarrel.

I now return to the case of Milligan.

Mr. Newmarch suggests, that if it is to be put to witness, as a matter of memory, whether there are now any statements in the deposition, which he does not recollect as having been there when he first saw and read over the case, it would be more satisfactory to test his memory, by reading the case over to him, than by putting the book into his hands to read, because there are interpolations and alterations in the book, which may strike the witness' eye.

Mr. Graham replied that the appearance of the book itself is a fact in the case, and it is in evidence that Mr. Roberts carefully read over the entry in that book; and it is the usual and proper course of examination to put the book into witness' hands, and ask him whether the entry of the case, as it now appears, is the same as it was when he examined it before, *i. e.* on the 15th of June.

The book B. is accordingly put into the witness' hands, and he is asked to read over the case, at page 23. Witness then says; the entry in Milligan's case does not now appear to me the same as it was when I saw it on the 15th June with Mr. Wauchope. In two places I can positively swear that there has been an alteration in the book, and in two others I am as positive, as a man can be, without absolutely swearing to the fact.

I swear that the ending of the case just before the Magistrate's signature was on the 15th June, when I saw

simply "*acquitted.*" I now find the words "*warned and*" before the word "acquitted"), which words were not there on the 15th June; and at the foot of the right hand page, the words "*I am very young, and did not know what I was about,*" have been inserted; they were not there on the 15th June. At nearly the end of Milligan's deposition are the words,—"*he said this without a moment's hesitation.*" I don't recollect these words being there on the 15th of June.

Another instance is, that the pen has been run through the word "*subsequently.*" As I read it on the 15th of June, it stood thus—"*he at first denied the theft, but subsequently confessed,*" the words "*at first*" and "*subsequently*" have, since the 15th of June, had a pen drawn through them. As the whole case at present reads, the effect of the evidence alters the impression it then made in my mind.

I have not seen this book B. since the 15th June

I have had frequent communications with Mr Wauchope on the subject of these two cases, (Milligan's and Sumboonath's also.)

Cross-examined by Mr. Newmarch—The communications I have had with Mr. Wauchope are as follows —Mr. Wauchope told me, about the 16th or 17th of June, that it was his intention to direct the attention of Government to some late cases tried by the Magistrate He also asked me what had been the Magistrate's decision in Milligan's case I told him the accused had been acquitted He asked, "*was he warned and acquitted,*" I said "*no, only acquitted.*" I meant with reference to what we had seen in the Case Book He then put this paper, marked F. into my hand. He said, "*look at that.*" I then said, the words "*warned and*" have been added. He then said (something like) "So say I, and a good deal more too"

Mr. Wauchope showed me the letter he sent up to Government. I saw it first in rough draft I think. When he showed me the paper F. it was marked with red ink, *i. e.* underscored. When I gave my answer about the decision, I looked at the bottom of the page, and answered. He did not ask me questions about other passages besides the words "*warned and,*" but he made statements respecting them himself. I saw the letter written by the Native Magistrate denying that he had altered the book. I also saw Mr. Wauchope's reply to Government upon that letter. I think I saw it, both in draft and fair copied, and read it over on both occasions (Witness then says) I am not sure of this, but I read the letter before it was despatched. If it had struck me that the letter contained misstatements of facts within my own knowledge, I would have suggested a correction. I can't say whether I suggested any alterations in that particular letter, dated 27th July 1858; but I have, in this correspondence. The suggestions I made were attended to, I believe. The alterations, which I have sworn to positively, have certainly been made with a different pen from that used in the other writing in the case. The words "*money deposited with*

him," appear to me also to have been written with a different pen; but the difference between that, and the general writing in the case, is not quite so striking, as those to which I have sworn positively as interpolations.

(Witness' attention being drawn to the words "*warned and,*" he says); the difference in the writing of those words and that of "*acquitted,*" is very striking; so much so, that I should not think the person who put in the words "*warned and*" was trying to write the same hand as that in which "*acquitted*" is written. I would make the same remark in regard to the entry commencing, "*I am very young,*" and ending with the word "*about;*" and the other hand writing in the case immediately contiguous to it. By the contiguous writing, I mean the whole writing in Abdool Ruheem's examination.

(The witness' attention was here called to the letter of 22nd June, written to Government; also, to Mr. Wauchope's statement, as to seeing the Case Book on the second occasion. Witness then says) Mr. Wauchope never asked me to look at the Case Book again. He never asked me to look at the book after the 15th of June.

On occasions of investigations similar to that of Khoda Bux, I have always asked the Magistrate's permission to bring the book. On the 15th June, when Mr. Wauchope sent for the Case Book, it was between 11 and 11-30 A. M. I don't know whether or no the Native Magistrate (defendant) had come to his office at that hour, on that day. The Case Book is kept in charge of the Magistrate's Head Clerk. Mr. Wilkie is the Head Clerk of Mr. Hume's office, and on the 15th of June he would have charge of the book B. I have since heard Purney say he went for the Case Book on the 15th. He is one of the oldest Officers in the Police, and a Superintendent of Division. I look at the entry against the name of Khoda Bux in the Defaulter's Book A, and I swear that the words "*I believe his evidence to be perfectly true*" are in Mr Wauchope's hand writing I saw the entry made at the time; on 15th June, after he had seen the Case Book I am quite sure Mr. Wauchope made the remark, "*I believe his evidence true, and shall enter it so.*" But as to the actual entry being *then* made, I am not positive, though I believe it to have been so.

The Commissioner's Report Book C. is for the following purpose. Every Divisional Officer enters in that book the substance of every charge, or report that comes to the notice of the Police, during the previous twenty-four hours. In cases where there are parties, they are produced before the Commissioner, who hears the general report of the case verbally from the Superintendent, and generally hears what the material witnesses have to testify, and the result enables him to know the nature and bearing, or probable issue of each case. In the last column, the Officer in charge of the case (after its disposal) writes, under the order of the Commissioner, the result or verdict. This book is kept in my Office during the day time.

That is the proper place for it. There is only this one book for the 3rd Division. After the Commissioner has given his order for the case to go to trial, the Officer in charge of the case takes the book with him, and it usually lies on the table of the Superintendent's room, until the cases are disposed of, and then it is brought back to my Office. I don't think the Officers in charge of the cases take this book into the Magistrate's room. They ought to write the result immediately they come down, but it is sufficient if they do it any time before the Commissioner comes to the Office next morning. The next Office day after the verdict in Milligan's case, enquiries were made by the Commissioner, in order to ascertain why the accused had been acquitted. The result of these enquiries was not considered satisfactory by me and the Commissioner, because the Officer assigned, as the reason for the acquittal, that the Magistrate had said he did not consider it a theft. To my knowledge, no communication was made to the Magistrate on that matter. I am not sure if I personally examined Chundernauth, before Sumboonath's case went before the Magistrate, but I had been informed by the Superintendent or the chokeedar that Chundernauth had brought the theft to notice I think I had not examined Chundernauth myself

Q.—The two latter alterations, to which you referred in your evidence in chief, are they the erasures of the words "*subsequently*," and "*at first*"?

A.—The erasure, with the pen, of the words "*at first*," and the word "*subsequently*," is one of the two alterations, to which I don't like to swear positively. The other is an interlineation near the top of the page on the right hand

Q.—Why did not you mention this interlineation in your examination in chief?

A.—I did. It consists of the words "*he said this without a moment's hesitation.*"

Q.—Is it an invariable rule that the Officer in charge of the case makes the entry of its result in the Report Book?

A.—Yes. It is also a general rule that he attends the hearing of the case before the Magistrate, but the rule has its exceptions.

To *Mr. Graham.*—At the interview I had with Mr. Wauchope after the 15th of June, it was before I looked into the copy of the depositions that I answered him, as to the result in Milligan's case. After I had answered, the copy of the depositions was put into my hand. The suggestions I made, regarding alterations in the correspondence (alluded to), were on points within my own personal knowledge. I consider both the interpolations, and the writing in the body of the depositions, in the Case Book, to be in the writing of the Native Magistrate.

To the Commissioners.—The Case Books are public records. I have had no communication with Mr. Wauchope regarding this matter since his examination, except that he told me he was quite knocked up, or used up, or something to that effect.

Witness George Purney, sworn by Mr. Hinde, says—I am Superintendent of the Southern Division of the Town of Calcutta. I have been in the Force since 1846. In consequence of directions from Mr. Wauchope, I applied to the Junior Magistrate for his Case Book, in the month of June. It was regarding the case of an Officer in the Fort. Mr. Wauchope merely sent me for the book. This book B. is (to the best of my belief) the book. It was given me, not by the Magistrate himself, but by one of the Clerks of Mr. Hume's Office. I had applied to the Magistrate for permission to take the book. That permission was granted. I have made several previous applications, on similar occasions, and with similar results. When I had got the book, I took it to Mr. Wauchope direct. Some days after, I was again sent by Mr. Wauchope for the book. I obtained it in the same manner I got the Magistrate's permission on that occasion also, and took the book to Mr. Wauchope. On the first occasion I took the book down to Mr. Wauchope's report room, on the second occasion I brought it to him in this very room It is an ordinary proceeding for the Commissioner to send for the Case Book, particularly when any fault has been found with one of the Police. I don't recollect there was any complaint against the Police in this particular instance. I was merely sent for the book, and not particularly told why.

Cross-examined by Mr. Newmarch.—I could not tell at all the date of the first occasion on which I got the book for Mr. Wauchope, nor that of the second occasion either. I do not think I got the book on any but these two occasions during June.

On the first occasion, I had been giving my usual morning report, and standing in front of the Commissioner. On that occasion I believe Mr. Roberts was with the Commissioner, as he is generally every morning. I cannot say on what they had been engaged immediately before sending for the book The Commissioner had been receiving usual reports of the Divisions, and so on. I could not say whether they were then engaged on any investigation into the conduct of a chokeedar, or any other Policeman. When I brought the book, I laid it before Mr. Wauchope, and then, to the best of my recollection, the book, after being looked at by the Commissioner, was given back to me to be returned to the Magistrate. It is impossible for me to recollect the date. I can fix it by looking at my Case Book. (Witness looks at the Commissioner's Report Book marked C.) Witness turns to the said book, and after considerable search, says, "here it is," entered as the case of Milligan on June the 12th. On a rough guess, I think it must have been on the 13th, the following day after this entry, that I was sent for the Magistrate's Book. I fancy it was that day, but I can't recollect exactly. I took the Book to Mr. Wauchope myself, but am not certain if I took it back to the Magistrate myself, or sent some one with it; but I got it back from Mr. Wauchope to take. In giving

my reports I have much to do, and cannot say whether I remained constantly in the Commissioner's room while he had the book. I have no notion of what passed between Mr. Wauchope and Mr. Roberts after their receipt of the book.

The second occasion of bringing the book was some days after; but I cannot tell the date. On that occasion Mr. Wauchope opened it, and read something in it, as he had done on the first occasion. I think, to the best of my recollection, no one was with him on that second occasion. At a rough guess, I shoud fancy it was about noon (after the reports were over, and the Commissioner had come upstairs) On the first occasion, it may have been 11 o'clock, but I cannot say exactly whether it was 11 or 12. I believe I did not bring the book more than these two times in June, but it was not a matter on which I expected to be called on to depose, so I took no particular notice. On the first occasion I am certain I asked the Magistrate for the book, for two reasons, the 1st is, that as a general rule, I never think of taking a book out of the Magistrate's Office without getting his permission; and the 2nd is, (what makes me recollect this particular occasion more than any other is) that Mr Hume being sick, his cases were tried by the Junior Magistrate. Had Mr Hume been there, I would have applied to him; the cases from my Division being generally tried by Mr. Hume only The Junior Magistrate was on his bench in his own room, when I made the application to him. I did not remark any particular party who was there at that particular time I can't say exactly what the Magistrate was doing. I believe I told him what I wanted the book for. I am certain I said that the Commissioner wanted to see it I am not certain whether I told him for what purpose the Commissioner wanted it, but I believe I did. I mean, in connection with Milligan's case. No objection was made to giving me the book. It was given as a matter of course, that is to say, an order was given that I should have it. This order was given to me I was told to take it, or to go and get it. It was in Mr Hume's Office. I don't know who gave it me. It was given me in one of Mr. Hume's rooms. I believe no books are allowed to be taken without Wilkie's consent. I believe he was there. I cannot say if he gave me permission, or who gave it I can't say whether the book was taken out of the desk, or rack, or shelf. I don't know where it was taken from. I cannot name any one person who was there. I took no notice of any particular person. I suppose the Clerks, who are generally in the Office, were there. On the second occasion, I am quite sure I asked the Native Magistrate for the book. He was on his bench, and I believe, in his own room. I have never seen him in any other, I believe. I cannot say particularly who was present on that occasion. I cannot say what the Magistrate was doing on that occasion. I noticed no hesitation when the book was given on this occasion. I am not sure whether

I was told on this (second) occasion to go and fetch the book. I think the Magistrate sent for the book, and it was given to me; but I am not certain. I cannot say who went for it. I took it myself to Mr. Wauchope. I see him have several papers with him, as he generally has on his desk; but whether he compared any paper with the book or not, I can't say. He opened and looked into the book when I was there. I can't speak for certain whether he paid any particular attention to any case. But I fancied it was with regard to Milligan's case. I think he looked at a particular page attentively. What page I cannot say. He looked at the page for some minutes. He looked at other pages as well, to the best of my recollection, I won't be certain. I can't say if I left the book with him, or brought it away myself.

To Mr. Graham.—Sending for the book is not such an extraordinary occurrence that I paid much attention to dates or circumstances. Mr. Wauchope gave me the order to fetch the book, and I obeyed, without asking why it was wanted, or what Mr. Wauchope was doing. Mr. Wauchope and Mr. Roberts do not let me into all the secrets of the Department, and when they were examining the book I had plenty of business. I am very busy for the hour between 10 and 11, or a little after, every day. Among my usual business is my Police cases, and cases of bad conduct of chokeedars. There is a bad conduct book, in which daily complaints brought against chokeedars by Inspectors and native Officers are entered. This book is laid before the Commissioner after reports.

I don't know the particular matter on which the Magistrate was engaged, when I asked for the book. He was attending to the usual duties. I don't know the particular duty on which he was then engaged.

To *Mr. Newmarch* (through the Court).—The book I mentioned just now is this book, marked A. I do not recollect taking Khoda Bux, chokeedar, before the Commissioner for giving a false statement to the Native Magistrate. It is impossible for me to recollect this particular man, as I have to take 15 or 16 chokeedars before the Commissioner daily for misconduct.

Q.—(By Court.) Did the Magistrate look into the book, on either occasion, before giving it to you, *without objection?*

A.—On the first occasion he did not look at it; and on the second, he opened the book, and looked at it, and then it was given to me. I cannot say what part of the book he looked at on the second occasion.

James Hume Butcher Wilkie, sworn by Mr. Hinde, says;—I am Head Clerk to Mr. Hume. In June last Mr. Hume was absent on sick leave. Kissory Chand Mittra, the Native Magistrate, performed Mr. Hume's duty during his absence. The cases belonging to the Southern division, and tried by the Native Magistrate, were entered by him in Mr. Hume's book. This

is the book, (marked B.) After the Magistrate had disposed of the cases, this book remained with me. I put the book under lock and key every day after Office was over. When the Southern Division cases were not going on, the book remained with me, and under my custody During the month of June last, I remember Mr. Purney called on me for this book. I recollect a case of Milligan's being tried before the Native Magistrate. I recollect it very well. After that case was tried and disposed of, the book came into my possession in the usual course. When the Case Book came to me on that occasion, I can't particularly say whether I took any notice of Milligan's case, but where cases are convicted, then I see for the term of imprisonment; and if fined I look for the amount of fine. I look at the sentence, whether "warned, discharged, acquitted," or otherwise. When a case is postponed, I put it on a separate list. I only look for the term of imprisonment, not for the particular terms of warned and discharged, or acquitted, or otherwise In the usual way I look at the result of all cases. I must have done so in this case, (witness turned to Milligan's case) I recollect that case. I merely looked at the end. I don't think that ending appears to be in the same state as it was when the book was brought to me, at the close of the trial. I don't think the words "*warned and*" were in this book, at the time it was returned to me. It would have struck me as remarkable, had I observed those words; because it is generally "*warned and discharged,*" and not "*warned and acquitted.*" Warned and acquitted might have struck me as remarkable, but I am not aware that it did. When official copies from this book are sent out, it is usual for me to sign them, and sometimes Mr. Hume authenticates them. It is not usual for any one else but me or Mr Hume to sign the copies. I have never known the Clerk of any other Magistrate attest a copy from that particular Division, excepting in this particular instance To the best of my belief, this signature (on F.) is that of the Clerk of the Native Magistrate.

Cross-examined by Mr. Newmarch.—It is equally unusual for a Superintendent to attest the copies of the Magistrate.

The papers I usually attest are those issued under Mr. Hume's orders. I don't recollect ever on any occasion attesting any papers issued out of Mr. Hume's Office by Kissory Chand Mittra. I recollect Mr. Wauchope at times sitting for Mr. Hume during his illness, or absence. I don't recollect ever attesting any copies issued out of Mr. Hume's Office by Mr. Wauchope on those occasions. If a verdict were entered in the book, of acquitted, or warned and discharged, I should have no official duty to perform in connection with such verdict. My official duties are confined to cases of conviction, or where remarks are made, regarding delivering over property or otherwise. Kissory Chand Mittra has sat several times for Mr. Hume. When I spoke of "*warned and acquitted*" as an unusual verdict, I made reference to Mr. Hume's decisions. I was asked for this Case Book by Purney only once in June. On this occasion he told me Mr. Wauchope wanted

to see the book, because there were certain words in the copy of the depositions he had received, which words were not in the book. I am certain he said this. He told me he had the Magistrate's order to get the book. He said he had had a similar order two or three days before, and that Mr. Wauchope had seen the book. I did not give him the book. I told him that I had received instructions since, that the book was not to go out of our Office. He then went away. A Baboo in our Office named Judoonauth had brought the orders, saying they were given by the Native Magistrate. I have no knowledge of Purney getting the book after that. If he got it after that, it was without my knowledge and consent. At the time Purney made that application, the book was on a desk opposite mine; but under my charge, and in the same room. I may have left the room shortly after. I don't know. Purney made this application to me about 12 o'clock. I stayed at Office for some time after that. My usual time for leaving Office is 4 or 5; and I have no recollection of leaving earlier than usual that day. I am not aware of any difficulty about Purney asking me for that book subsequently, during that afternoon. Purney had not asked my permission to take the book on the previous occasion, on which he said he had got it. I am the person responsible for the custody of that book. It is not usual for the book to be taken away anywhere to any body, while I am in Office, without an application being made to me, except Mr. Hume requires it in his own Office, and any Assistant may take it to him without asking me. I don't remember any other instances in which the book has been taken out of the Office while I was there, without application being made to me. I don't think I had been absent from Office. I had attended regularly during June. An application was made to me for the book during June, in order that copies of depositions might be made. I don't know who brought me word it was required by the Native Magistrate. Don't remember what day that application was made. On the day the Commissioner's letter, asking for copies, was received in our Office, and after the cases were over, this book was sent for. I mean our Division cases. The cases had been disposed of in the Native Magistrate's room, and the book had then been brought back to Mr. Hume's Office. The letter came from the Commissioner, requiring copies. The said letter was received by Mr. Namey, a Shipping Clerk, during my temporary absence. He gave it me on my return. I gave it to the Native Magistrate's Clerk, and he gave it to the Magistrate, in my presence. He read it, and put it under a book. I went to see if any orders would be given me by the Native Magistrate: no orders were given, and I returned to my Office. It was (may be) two or three hours after, that I received an application for the book, in order to have copies made. I don't remember who brought me the application. Can't remember what time it was. Gave the book, and it was returned to me that evening, two or three hours after, and just before business hours were over, I think, and I did not issue it again.

To Mr. Graham.—I don't stick at my desk all day. I occasionally go out, and move back and forward from room to room. The order brought to me by Judoonath Mookerjee, was a verbal one. Judoonath is a writer in our Office. He stands before the Magistrate. If the Native Magistrate sent for the book in the absence of Mr. Hume, and while the Native Magistrate was doing the duty, he would get it; had he sent for it in the ordinary course of business, he would have got it.

Q.—Should the Commissioner send up in a great hurry, and you not be in Office, would it have been extraordinary to take the book?

A.—I know of no instance of the sort, since there has been a Police Commissioner. There is a verbal order by Mr. Hume, that the Case Book should not be given out to any one without his permission.

(The Court adjourned at 5 P. M., having decided to meet again to-morrow, the 1st October.)

Third Day's Proceedings.

(Friday, 1st October, 1858.)

George Purney, recalled, and sworn by Mr. Hinde.

Q.—*(By the Commissioners)* In your cross-examination you stated, that "*no books ought to leave the Magistrate's Office "without Mr. Wilkie's consent. I believe Mr. Wilkie was "there. I cannot say whether he gave it to me.*" Do you mean to say you took the book with his permission?

A.—I cannot say whether I got it *direct* from Wilkie, or whether it was given to me by another party, by his order. I may not have seen Wilkie at all. I do not recollect Wilkie declining to give me the book on that day. But I have a slight recollection of once asking Wilkie to allow me to look at a book, and he said he could not do so, without the permission of the Magistrate.

Even if I had received the Magistrate's permission, I should not have considered myself at liberty to take the book without Wilkie's permission. I should have told one of the Clerks there, that the Magistrate had told me to take the book, even had the Commissioner called for it in a great hurry. There are always some of the Clerks there when the Magistrate is sitting.

Witness William John Moore, sworn by Mr Hinde.

To Mr. Graham.—I am an Inspector of the Calcutta Police. I recollect the case of Milligan *versus* Abdool Ruheem being heard before the Native Magistrate in June last. It was on the 12th of that month I believe. I was present during the hearing of the said case, and I heard the decision in it. It is my duty, as Inspector, to enter the result of all cases of the third Division in the Commissioner's Report Book. In the case of Milligan I made the said entry. This book (C.) is the Report Book. I find the entry at June the 12th,

Milligan of the 73rd Regiment *versus* Sheik Abdool Ruheem and Ramchurun, for theft of cash and a Bank Note for Rs. 25. I find the result entered as "*acquitted.*" That entry is in my hand-writing. I was present, attending and listening to the case throughout. According to the best of my belief, this is a correct entry of the decision given in the case. I made it on the morning after the decision, about 7 A. M. The case was decided between 12 and 1 o'clock. It is the custom with me to enter the result of cases the next morning after the trials, because the book C. is generally occupied by the Clerks in the Commissioner's Office, noting down the fines of the day, and therefore I don't get the book *that* day, but the following morning. To the best of my recollection the ground for the verdict of acquittal was as follows, viz. the Magistrate asked the prosecutor whether he had ever entrusted the accused boy with any money on a previous occasion, and on the prosecutor saying, "no, he had not," the Magistrate said that if he had done so, he would then have treated the case as one of embezzlement. There were a few more words passed between the Magistrate, the prosecutor, and Mr. Weskin, an Attorney. Mr. Weskin mentioned some Act, but the Magistrate did not heed him, and said simply, "*Jao, khulass.*" After that the case was over, and all parties left the room.

(To the Commissioners.)—The accused boy was 13 or 14 years of age, the other prisoner was a grown man.

Cross-examined by Mr. Newmarch.—Lieut. Milligan on that occasion conversed in English. It was from the words "*Jao, khulass,*" that I entered the verdict "*acquitted*" I think the Magistrate, prosecutor, and Mr. Weskin, were conversing together scarcely two minutes I took no part in that trial myself. I had nothing whatever to do with getting up the evidence. I was in the Magistrate's room at the time. It is a part of my duty as 1st Class Inspector, in the absence of the Superintendent of Division, to watch the cases, and see how they are conducted. I mean, to see that the witnesses are all in attendance, whether the Magistrate chooses to take them or not For that purpose only I attend. Previous to the conversation between Mr. Weskin, prosecutor, and the Magistrate, I had heard no decision given in English in Milligan's case. The Magistrate did not speak, in my hearing, one word of warning to the prisoner. Only the two words ("*Jao, khulass*") I have mentioned. The evidence was explained to the prisoners in Hindoostani. I understand Hindoostani almost perfectly. Not very much Bengalli. I do not recollect the Magistrate telling Abdool Ruheem that had the offence amounted, in his opinion, to embezzlement, he would have ordered him a flogging. There was not a word spoken by the Magistrate to the prisoner, excepting the two last words ("*Jao, khulass.*") I was within two or three feet of the Magistrate, and it was impossible he should have addressed the prisoner without my hearing. I pledge my oath that, from the time of the evidence ending until the parties left the Court, the Magistrate addressed no words to the prisoners or either of them,

excepting those two words I have mentioned. I am quite sure the words "*kubbardar*" never passed from the Magistrate to either of the prisoners. I am positively certain, and I positively swear, that no words passed unless the Magistrate muttered them to himself. Had he spoken them I must have heard. Lieut. Milligan was standing on the left, and I was standing on the right of the prisoners. The Magistrate could not have addressed any words to the prisoners (during the interval of time just mentioned), so that Lieut. Milligan *could* have heard, and I *not* heard them. Mr. Weskin was sitting on the left of the Magistrate, on the platform. A word or words might have passed from the Magistrate to the prisoner (during the interval just mentioned), so that Mr. Weskin *might* have heard, without my hearing. I don't remember hearing the Magistrate asking any questions about the age of the prisoner Abdool. I did not pay very particular attention to any part of the proceedings except the decision. I was perfectly acquainted with the circumstances of the case before going in to the Magistrate's Office. The only duty I had to perform besides seeing that the witnesses were in attendance was, to note the final decision. It was about 12 or 1 that the case was decided; and after that I went home. I had many other duties to perform, before 7 next morning. Some of these are, to attend to complaints, and answer the call of any gentleman having a complaint to prefer, go on my evening parade, and go my rounds, and my time, with exception of what I spent in sleep, was pretty fully occupied with my duties. I make the entries in this book of the result of all cases of my Division, as well those at the trial of which I am present, as those at the trial of which I am not present. Weskin was seated there all the time, say about a foot and a half from the Magistrate, on the raised platform. I was at the outer rail, about 3 or 4 feet from the Magistrate The prisoners were in the same line with myself, but more opposite to the Magistrate than I was. Lieut. Milligan was in the same line, just beyond the prisoners.

(The Commissioners proceeded to the Native Magistrate's room, where the witness pointed out the exact positions where all the parties had stood at the time.)

(Witness continues to *Mr. Graham.*)

In the case book, the charge and the names of the witnesses and parties are entered by the Clerk. This is done before the case is heard by the Magistrate.

Witness *Richard York,* (sworn by Mr. Hinde,) says —I am an Inspector of Calcutta Police. In the month of June last, I recollect the hearing of a case of Lieutenant Milligan, against his servant. I remained in Court the whole time of that trial. I heard the Magistrate's decision in that case. The Magistrate told the prisoners to go away; and they were discharged. The case was dismissed; the Magistrate said "*Jao, mowkoof hooa.*" I am sure those were the words. All the parties

and people went away immediately after. I had been paying much attention to the case. The Magistrate said the case was neither one of theft nor embezzlement. That was before he said "*Jao, mowkoof.*" Some minutes before—in the progress of the case, he said it was neither theft nor embezzlement. I am sure I understood that. After he had said it was neither theft nor embezzlement there was an interval of some minutes before he said "*Jao, mowkoof.*" It was to the prosecutor he said it was neither a theft nor embezzlement. He took my deposition and the prosecutor's, and then he said, it was not a theft nor embezzlement.

Cross-examined by Mr. Newmarch.—I had the taking up of the case. Abdool Ruheem, the servant, who was charged with the theft, was quite a boy. I don't recollect the Magistrate asking any question about his age. I don't know whether he did or not. I am not certain. The Magistrate said nothing to Abdool Ruheem in the nature of a warning.

He said to him nothing to the effect that if the offence had amounted to embezzlement he would have ordered him a flogging. He used no such expression as "*kubburdar*" to him. I was the last of the witnesses examined in that case. I stood alongside the prosecutor, on his right. I was between him and the prisoners. He was not further from the Magistrate than I. About the same distance. I continued in that same position until the case was disposed of. I was paying attention from the time the evidence ceased, until the prisoners were sent away. I did hear the Magistrate give a decision of the case in English. He said it was neither theft nor embezzlement. He then spoke in the native language, and said, "*Mowkoof hooa, jao*". He told me in English to make the money over to prosecutor. When he said the case was not theft nor embezzlement, he did not add any of the formal English words of "case dismissed," "Prisoners discharged" "or acquitted," or so forth. What I considered the decision in the case was, "*Jao mowkoof.*" I do not know Weskin. I did not pay any very particular attention whether there was there present an attorney in the habit of practising in the Court. When the Magistrate had said the case was neither theft nor embezzlement, I don't remember that any conversation passed between him and any one present, about the case. There was nothing particular happened between his saying that, and his saying "*Jao, mowkoof;*" the Magistrate was writing in his Case Book after my deposition was finished. The boy, I believe, said, he did not steal the money ; but it was given him by his master to keep. The other prisoner made no statement. I think it was before the boy said what I have mentioned, that the Magistrate said the case was neither theft nor embezzlement. Lieut. Milligan and I were standing close together. If Lieut. Milligan states that the Magistrate told the offender that had the offence amounted to embezzlement, he would have ordered him a flogging, I can't say how it was that I did not hear those words. I did not hear them. I am quite sure that when the boy said he

had not stolen the money, but that his master had given it him, he did not add any thing. I am quite sure he did not say any thing about being very young I am quite sure he did not say he was sorry for what he had done. I am quite sure the other prisoner, "*Ram Churrun*," did not make any statement at all. I don't know Weskin.

To the Commissioners.—The boy was about 14 or 15 I consider this the age of a "*boy*." I understood by "*Jao, mowkoof*," "*go away, you are dismissed.*" I thought the case was dismissed; as I was ordered to give prosecutor the money

Q.—When you heard the words "*Jao, mowkoof*," did you consider the prisoners convicted or acquitted?

A.—I considered the prisoners acquitted

Q.—Did you ever before hear those words used by the Magistrate when a prisoner was acquitted?

A.—I was never before the Native Magistrate on any former occasion

Q.—When you heard the words "*Jao, mowkoof*," did you consider it tantamount to telling you to let the prisoners out of your custody?

A.—Yes I did.

(Prosecutor here puts in a correspondence, being a letter No. 2918, from Government, to Kissoon Chand Mittra, and his reply, No. 76, dated the 6th of September 1858. These letters are recorded, and marked respectively O and P).

Mr. Newmarch suggested that, to save time, a written statement of the services of the accused should be put in, instead of calling Mr Buckland as a witness.

Mr. Newmarch said, that if the prosecutor declined to call Mr. Weskin, he should ask the Commissioners to do so, under Section XIV. of the Act; and in that case, he would waive his right to a postponement *Mr. Newmarch* urged that if Mr. Weskin were not called for the prosecution, but for the defence, the right of cross-examining him would be taken from the defence; which would make a material difference.

The Commissioners decided on calling Weskin themselves, under Section XIV. of the Act.

Mr. Graham strongly objected to this; and urged that if the accused considered Weskin such a trustworthy witness, he should be called for the defence. He had purposely not been called for the prosecution.

The Commissioners adjourned till to-morrow, the 2nd October, 1858.

Fourth Day's Proceedings.

(Saturday, 2nd October, 1858.)

Mr. Graham, under Section XIV. of the Act, applied to be allowed to call Inspector Ferris, a material witness, whose name had, by oversight, not been included in the list given to the accused, under Section X. of the Act.

Mr. Newmarch waived his right to adjournment, under Section XIV. of the Act.

William Ferris is therefore called, and sworn by Mr. Hinde. says,—I am an Inspector of the Calcutta Police. In the month of June last, I remember a case of *Sumboonath Dhur* versus *Deedar Bux*, being tried before the Native Magistrate. I was the Inspector in charge of that case. It is the duty of the Inspector in charge of a case to look after the witnesses, and see they are in attendance. This (in book B,) is the entry of the case. There are two witnesses named there, and they were both in attendance. Only one of them was examined. The one named "*Chundernath*," was not examined. I am quite certain of that fact, and also quite certain he was in Court

Cross-examined by Mr. Newmarch.—The Inspector makes occasionally a general statement to the Magistrate of the facts, to prove which the witness is to be called. It is very seldom done, and I did not do it in that case When a plaintiff makes a false charge, then the Inspector in charge of the case sometimes speaks to the Magistrate. It is not done always. The Inspector generally knows what the witnesses are to depose to.

"*Chundernath*" was sitting cooking in the room, and prosecutor was sitting at the door, near the street, smoking, at the time (of the theft). *Chundernath* said to me (witness), that he had seen some one put his hand through the mat partition of the house, and remove some firewood.

To the Commissioners.—This means that both prosecutor's and defendant's houses are situated together, and only a mat partition between them. This was told me by the chokeedar. I did not myself examine the house.

I can't say whether I brought it to the Magistrate's notice, that "*Chundernath*" was a material witness, because prosecutor was present, and "*Chundernath's*" name was the first on the list; and I thought the Magistrate would call him, as he generally does; that is, in the order their names are entered in the book.

Mr. Graham admits a memorandum of the Native Magistrate's services, as furnished from the Bengal Office. The said services are as follows, viz.—

"Appointed Deputy Magistrate of Rajshye, on the 1st of "April 1846.

"Vested with full powers of Magistrate, and placed in "charge of the Sub-Division of Nattore, 28th of October 1848.

"Transferred to Jehanabad, in Hooghly, on the 15th June "1852. Promoted to the Junior Magistracy of Calcutta on the "14th of June 1854."

Mr. Graham informed the Commissioners that, on the part of the prosecution, he gives the accused the opportunity of being examined on oath. There could be no legal objection, he urged, the present being in the nature of a civil enquiry, and not a criminal case.

Here the case for the prosecution closed.

Witness called by the Commissioners under Section XIV., Act XXXVII. 1850.

Weskin Theodore Weskin, (sworn and examined by the Commissioners) says—I am Managing Clerk of the Office of Mr. Gillanders, an Attorney of the Supreme Court. I recollect being present, between the 10th and the 15th of June last, in the Office of the Native Magistrate, at the trial of a case. Since I saw Mr. Wauchope I have learned that the name of the prosecutor in that case was Lieutenant Milligan. I suppose it was in July or August last that I saw Mr. Wauchope, on the said occasion. He called at my Office, and there I learned from him the name of the prosecutor. He called expressly to ask me about the said case. I was present during the whole time the case was being heard. During the time of the hearing I was standing near the Magistrate's table, on the left side. I was not more than two and a half or three feet from where the Magistrate was sitting. The prosecutor made his statement, and in all his statement went on to show that the boy (the defendant) had received charge of the money, and gambled it away in whole, or in part. I believe the Inspector was examined, and I don't remember any other witness being examined, (I am not quite sure) when the case was closed. The accused boy was acquitted. The Magistrate enquired of the boy what was his age. This was previous to the acquittal. The boy, I believe, answered that he was 13 or 14. I believe the boy also said that he "*has done a fault, and he will take care never to do it again.*" To the best of my recollection, that was all the boy said. The Magistrate lectured him a little; reprimanded him, to take care that he should not be again brought before him, and this time he would acquit him, or excuse him, ("*maaf kurta.*") The Magistrate spoke in Hindostani. He said—"*Toom burrak chota oomur ka hai—kubburdar ruho, doosra duffa aisa nalish toomara nam pur humara pas awega, hum toomko saza dega; ych duffeh, toomko maaf kya.*" That is nearly what the Magistrate said; and on that the prisoner was discharged. I believe prisoner left the room immediately, but I did not pay particular attention. Another case was called in, I think. I observed the Magistrate taking minutes of the evidence. I was close enough to see him writing. I saw his pen moving on the book. I could not see what words he wrote. I am in the habit of cross-examining witnesses. I have very seldom found a native give a direct answer as to

his age. On this occasion, the boy answered direct, and gave his age. I believe that when prosecutor first came in, he was in some measure excited, and he was insisting on his case being heard immediately without any loss of time; and I believe at that time the Magistrate was closing, or about to close, another investigation before him. The prosecutor was insisting on his case being taken quickly. But, besides that, I don't recollect hearing any conversation pass between the prosecutor and the Magistrate regarding the nature of the case. A remark first went from me to the Magistrate. I suppose it was when the evidence was gone into, and the Magistrate, I believe, was shaking his head at the time, which I took it was for an acquittal. I made the remark; and it was, that I thought the case was brought home under Act XIII. of 1850. The Magistrate in answer said, that in his opinion it was not. He said (as far as I can recollect) that the boy had charge of the money casually, and had gambled it away, without any felonious intent. In his opinion, the boy was not guilty. I am not in the habit of standing, or attending the Police Office, and directing the Magistrate's proceedings; but on that particular day, I had to defend a criminal suit against one Chuttoo Lall, and I happened to be at the Police an hour or so before the time fixed by the Magistrate; and I heard the case of Milligan going on. I do not know the grounds of the Magistrate's acquittal further than what he stated in answer to my remarks. I am quite sure I did not see the words the Magistrate wrote in the Case Book, nor any of them. I don't recollect the Magistrate making any remark to Milligan afer the case was over. I don't remember the Magistrate saying any thing to Milligan about the case, further than taking down his deposition. Milligan did not like the decision. I don't know what he said.

Cross-examined by Mr. Graham.—Before Mr. Wauchope called on me in July, I had not had any conversation about the case with any body. I had forgotten all about the case, till Mr. Wauchope called it to my mind. I answered merely the question, which Mr. Wauchope put to me; and he wished me to give a statement in writing, but I declined to do so. He cut the matter short, and went away. I don't think I mentioned to Mr. Wauchope any thing about the Magistrate warning the boy, or the lecture given him. I did not, because Mr. Wauchope's questions came particularly to the point, whether I had made any remark to the Magistrate during the investigation of the case; and secondly, whether I was present when the case was finally disposed of. Then he wanted to know whether the boy was acquitted; and I said, "yes." I never mentioned to Mr. Wauchope the circumstance of any legal scruple of the Magistrate, as to whether the case was one of theft, or embezzlement. At that interview, I never told Mr. Wauchope that one of the Inspectors was annoyed at the prisoners getting off. I never noticed any Inspector there, other than the one who gave his evidence. I don't remember; there may have been another;

the room is generally crowded. I never told Mr. Wauchope that, in answer to the Inspector, I had said; "*it is very hard indeed.*" "*It is very seldom a gentleman would take the trouble to prosecute his servant, and now when he has done so, it has come to nothing.*" The interview with Mr. Wauchope lasted three, or four, or perhaps five minutes. I do not think it was any longer. I have never seen a copy of the depositions taken in Milligan's case. I have seen an extract from the Case Book containing Milligan's case. It is more than a month since I saw it It was sent to me enclosed in a letter from the Native Magistrate, who asked, in the said letter, whether, from what I had heard in the case, I considered it to be a correct extract. In answer, I said; "I think it is." The letter was on common chit paper, and the extract was, so far as I recollect, on the other side; or it may have been on another paper, I am not sure. I think it did not contain the statements of the witnesses in Milligan's case. That was the first communication I had had with the defendant on this matter. Mr. Watkins saw me a day or two previous to my being served with the subpœna, which was served I think four or five days ago. I allude to a subpœna which I considered to be for the defence. That is the only communication I have had with *Mr. Watkins* on the subject. I recollect *Mr. Mayfield* meeting me in the Supreme Court That was either immediately before, or immediately after, my being subpœnaed. To the best of my recollection I had seen *Mr. Watkins* two or three days previously, in fact I had seen *Mr. Watkins* previously to seeing *Mr. Mayfield*

Cross-examined by Mr Newmarch—Mr. Wauchope put no question to me as to whether the Magistrate had warned the prisoners. I would have answered him, if he had. He did not put any question to me as to whether the Magistrate had asked the age of the prisoner. He did not put any question to me as to whether the prisoner had made any statement respecting his age. The Act XIII. of 1850 has caused a good deal of discussion among the legal world here, and it is considered very doubtful what cases come under it, and what cases do not. From what I saw of Milligan's conduct during the trial, I cannot take upon me to say whether he understood the Hindoostani language or not. When I speak of the Magistrate's decision being an acquittal, I refer to those words in the Native language, which I have mentioned above. I saw the Magistrate shaking his head in a manner that denoted acquittal. I considered he had then made up his mind on the case. My conversation with him was merely on a theoretical point of law. I had no wish to induce him to alter his decision. This discussion (upon the point of law) may have occupied five minutes, or perhaps a little more. I can't be sure whether I have the Native Magistrate's chit, or whether it is destroyed. Judging by the appearance of the boy, I considered him to be the age that he stated.

To the Commissioners.—No one was with Mr. Wauchope when he called on me. I can't say whether the native Magistrate is in the habit of shaking his head differently when he is going to *acquit*, than when he is going to *convict*.

Mr. Wauchope, recalled by the Commissioners, at the request of Mr. Graham. Witness is shown the 11th paragraph of his letter (I) No. 700, dated 27th of July 1858, and says; to the best of my recollection, it was on the Wednesday forenoon before I wrote this letter of 27th July, that I called at Gillanders' Office (on my way to the Municipal Commissioner's Office). I saw Mr. Weskin on that occasion; and in consequence of the conversation with Weskin, I wrote this paragraph 11 of 27th July. Mr. Weskin never did actually use the word "acquitted," so far as I remember, but he said the Magistrate let the prisoner off, because he did not seem to think he had committed any offence at all. Then I said, "I suppose he acquitted him." Weskin said, "then, what else was it;" or something like that. I spoke about his giving a written statement, but I forget whether he offered to do it, or I asked him to do it. He seemed quite willing to give it; and said, he would give me all the information I required. He told me all that I wanted to know; and there seemed no occasion for any written statement. He most certainly did not refuse to give me a written statement. I left, because he told me every thing I wanted. My interview was not cut short by his refusal to give me a written statement; at least, it was not to my knowledge. He told me everything I wanted, and I went away. I had been there about ten minutes or a quarter of an hour. I asked Mr. Weskin, did you see anything of a Police Inspector of mine there. He said "yes; there was an Officer, who seemed very much annoyed at the result of the case, and he spoke to me about it; and I (Weskin) said, it was very hard; you seldom see gentlemen prosecuting servants, and it is very hard that when a gentleman has done so, he should get off like this." I understood that Weskin had said this to the Officer, as if to sympathise with him; and it was principally owing to Weskin telling me that, that I did not ask Weskin a question I intended to have asked, which was, whether the boy had been warned, or not. I don't think any thing was said by Mr. Weskin, as to the grounds on which the Magistrate had given his decision. Witness' attention is called again to paragraph 11* of his letter, and to the words "acquitted the prisoner, because he held the offence committed was neither theft nor embezzlement." Witness is asked whether he considers that to be the substance of what he has now said?

A.—Yes; I consider what I have stated in the letter is a fair result of my conversation with Weskin. Weskin said nothing about the Magistrate having warned or lectured the prisoner. He did not say the Magistrate had not warned him.

Cross-examined by Mr. Newmarch.—I did not ask Weskin whether the prisoner had made any statement relating to his age

I went to the meeting of the Municipal Commissioners immediately after, and without then making any note inwriting of what had passed at the interview. I made no note of the conversation till I wrote my letter very soon after. It may have been that day, or next, I am not certain. I went to one of the weekly meetings of the Commissioners. On an average those meetings last about three hours. I have given now, as nearly as I can, all that passed at the meeting between Weskin and myself regarding this case. I don't recollect any thing more regarding it at present. Witness' attention is again drawn to paragraph 11 of the letter of July 27th, and states that he understood from Inspector Moore that Weskin was present at the trial of the case, and made some remarks to him. Witness adds, it was the impression on my mind that Moore said that Weskin had made some remarks, which were heard by the Magistrate I know the Inspector said some remarks had been made, but I am not able to say whether the remarks related to the law of the case I don't know whether they were made to the Magistrate, or in the hearing of the Magistrate. At the interview with Mr Weskin, I don't recollect his giving me any of his ideas on the law applicable to the case I am not sure he did not, but my impression is, he did not I don't recollect it certainly.

Q.—Are you quite sure that the words "it was so seldom gentlemen prosecuted cases, that it was a pity the accused got off on the present occasion," (or words to that effect) Are you quite sure that Weskin said he had made that remark to the Inspector, or was it that the Inspector made that remark to him?

A.—I most certainly understood it that Weskin had said so to the Inspector, because, after telling me that, he would have thought it ridiculous in me to ask the question whether the prisoner had been warned.

Mr. Newmarch asked for time, to enable him to put in a written defence He stated, that the defence would be ready on Friday, the 8th instant.

The Commissioners accordingly adjourned till that date.

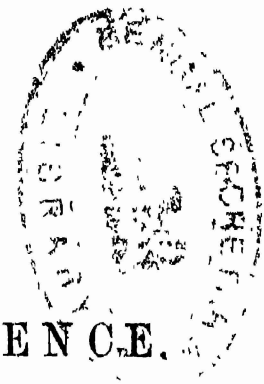
Fifth Day's Proceedings.

(*Friday, 8th October*, 1858.)

Mr. Watkins, in the absence of *Mr. Newmarch*, openly read the written defence; which was recorded, and a copy given at the same time to the prosecutor; as required by Section XV. Act XXXVII. 1850.

Mr. Graham applied for an adjournment till to-morrow, to allow of his looking into the precedents, cited in the defence.

Under Section XX. of the Act, the Commissioners adjourned till the 9th of October, at 11 A. M.



DEFENCE.

THIS case originates out of the following circumstances. On the morning of the fifteenth of June last a Chowkeydar named Khodabux, was brought before Mr. Wauchope, the Commissioner of Police for the Town of Calcutta, charged (as it was then represented to the Commissioner) by the Defendant in this case, who is a Justice of the Peace and one of the Magistrates of Calcutta for the Northern Division of the Town, with having given false evidence in a case of alleged theft preferred on the previous day by one Sumbhoonauth Dhur against one Dedarbux before the said Magistrate, who was then trying the cases for the Southern Division of the Town, during the temporary absence of his colleague Mr. Hume, detained from office by sickness.

Mr. Wauchope in the course of the investigation of the case against the Chowkeydar, sent one of his subordinate officers, Mr Superintendent Purney, to fetch the *Case Book* in which the Magistrate had noted the proceedings at the trial of Sumbhoonauth Dhur's case.

The book was brought, perused by the Commissioner, and, after the charge against the Chowkeydar had been disposed of, returned to the Magistrate's office.

On the following day Mr. Wauchope addressed to the Magistrate of the Southern Division the following letter dated the sixteenth of June One Thousand Eight Hundred and Fifty-eight.

No. 572.

16*th June*, 1858.

TO THE MAGISTRATE OF THE SOUTHERN DIVISION, CALCUTTA.

Sumbhoonauth Dhur
versus
Dedarbux
14*th June* 1858.
Lieut Milligan 73d Regt.
versus
Shaik Abdool Ruheem
and
Ramchunder Kahar.
12*th June* 1858.

SIR,—I have the honor to request you to forward to me copies of the depositions of the two cases noted in the margin, in the former of which you directed Chowkeydar No. 57 to be brought before me for giving false evidence, and in the other of which there must have been some very extraordinary misrepresentation of the case made to me by the Police into which I wish to enquire.

I have &c.,
(Signed) S. WAUCHOPE,
Commissioner of Police.

This letter was taken to the defendant, who was still acting for the Magistrate of the Southern Division and who sent to the Commissioner the copies of depositions required by him accompanied by the following letter :

No. 45.

FROM
THE MAGISTRATE OF THE NORTHERN DIVISION CALCUTTA
TO THE COMMISSIONER OF POLICE, CALCUTTA.

Dated, Calcutta Police Office,
The 18*th June* 1858.

SIR,—I have the honor to acknowledge the receipt of your letter No. 572, dated the 16th Instant, and to forward herewith copies of the Depositions as requested therewith.

I certainly did not believe the statement of Chowkeydar No. 57 regarding the finding of the property, and I would have felt it my duty to commit him for perjury, if the case were clear against him. I had no doubt in my mind that the prosecutor, a Hindoo, was moved by bigotry and antagonism of religion in getting up the charge of stealing firewood against the prisoner, a Mahomedan, as it clearly appeared on evidence that the former had previously

threatened to annoy and harrass the latter for cooking food forbidden by the shastras.

I have &c.,

(Signed) KISSORYCHAND MITTRA,

Magistrate

SECTION R.

12*th June* 1858, *Saturday*.

841 Wm. J. L. Milligan, Lieut H. M. 73d Regt.
versus
1 Abdool Ruheem
and
2 Ramchurn
(in custody)
WITNESSES
1 Dhurraj
2 Jummabux
3 Chotookhan
4 Insr Richard York
5 Baboo Gowallah

INSPECTOR RICHARD YORK —Prosecutor charges 1st prisoner with stealing, on the 10th Instant, one Bank of Bengal Note No. 32028 for Co.'s Rs. 25 and Rs. 25 in silver his property and money, and 2nd prisoner with afterwards receiving Rs. 20 being part of the above money so as aforesaid stolen, with a guilty knowledge.

Received the Bank Note, Rs. 21 in silver and 17 annas and ½ in copper.

12*th June* 1858.

WILLIAM J. L. MILLIGAN, on oath says—I am an officer attached to H. M. 73rd Regiment and live at the Fort. I know the prisoners now here present. On Wednesday last I gave a Bank of Bengal Note No. 32028 for Rs. 25 and Rs. 25 in cash to Abdool to keep. On that day I found the first prisoner running down in an excited state of mind. My suspicions being aroused I sent my bearer to stop him. I then followed him myself and found, in the kitchen, this handkerchief and a Rupee tied up therein. *I asked him for my money. He said he had spent the silver. He said this without a moment's hesitation.* I then made him over to the Police.

RICHARD YORK, on oath says—I am Inspector of Police. Yesterday I received the charge. It was one of stealing. It was preferred by William J. L. Milligan. The first prisoner was made over to me by the prosecutor. I explained the charge to him. He at first denied the theft but subsequently confessed to having taken the money (deposited with him) and gambled it away. He said he had played with Ramchurn and had lost a portion of the money. He took me to Ramchurn the second prisoner

now here present. I asked Ramchurn if he had received any money from Abdool Ruheem He said "yes—I have won from Abdool some money." He produced 20 Rs. Abdool then took me to a place where he said he had kept the Bank Note. He produced the note himself.

ABDOOL RUHEEM says—I am in the employ of the prosecutor. He gave me the money to keep and I appropriated it. I am sorry for what I have done. *I am very young and did not know what I was about.*

RAMCHURN says—I admit gambling with Abdool and winning 20 Rs. but I did not receive the money with guilty knowledge. Warned and acquitted.

(Signed) K. C. MITTRA,
J. Peace.

SECTION M.

14th June Monday.

852 Sumboonauth Dhur, Hindoo, Shaik Dedarbux (in custody.)
WITNESSES
1 Chundernauth Dhur
2 Shaik Khodabux
M 54.

INSPECTOR WILLIAM FERRIES.
Prosecutor charged prisoner with stealing last night 8 pieces of firewood worth ½ anna, his property.

Recovered.

14th June 1858.

SUMBOONAUTH DHUR, on solemn affirmation says—I keep a *moodee* shop and live at Misreegunge in Calcutta. Last night at 11 o'clock while I was seated at the door of my shop, one Chundernauth Dhur called my attention to something in my shop. I went in and saw the prisoner removing the eight pieces of firewood. I called the Chowkeydar who arrested the prisoner and recovered the property from his house.

SHAIK KHODABUX, on solemn affirmation says—I am a constable of Police. Last night I received the charge. I arrested the prisoner at his house. He was seated on these pieces of firewood.

The prisoner says—I deny the charge, I am a Mahomedan, and prosecutor is a Hindoo. He often quarrels with me whenever I cook any food which is forbidden by his religion. Our cook-rooms are adjoining each other.

LALLMOHUN, on solemn affirmation says—I am a shopkeeper. I know prosecutor and defendant. They are at loggerheads. Prosecutor often quarrels with defendant for cooking beef. Their cook-rooms are adjoining. *Prosecutor in fact once threatened to drive him out of his homestead.*

Case dismissed, defendant discharged and complainant ordered to pay 10 Rs. amends to defendant.

(Signed) K. C. MITTRA,
J. Peace.

After receipt of this letter with the copies which accompanied it, the Commissioner of Police thought proper, three or four days subsequently, to address the following letter to the Secretary to the Government of Bengal :

FROM THE COMMISSIONER OF POLICE, CALCUTTA,

TO THE SECRETARY TO THE GOVERNMENT OF BENGAL,

Judicial Department, Fort William.

SIR,—A few days ago Mr. Superintendent Purney, under instructions of the Northern Division Magistrate brought before me a Chowkeydar charged with giving false evidence in a case of theft, but as the man appeared to have deposed before the Magistrate precisely in accordance with the statement he had previously made to me, and which I had believed to be correct I examined the case book of the Magistrate to see in what manner the Chowkeydar had spoken falsely. I also took the opportunity of reading the depositions in another case of theft in which the Defendant, though admitting the offence before me, had been acquitted.

2. Thinking that both these cases deserved some enquiry on my part, I requested the Magistrate to send me copies of the depositions taken by him. I have the honor to submit my letter, his reply, and the copies therewith forwarded, for the consideration and orders of the Honorable the Lieutenant Governor of Bengal.

3. I must here explain that it is my custom to have before me every morning the witnesses in each case previous to its being sent before

a Magistrate, so that I can generally form a very good opinion as to what the decision ought to be. On the following morning I examine the sentences passed in every case, and if the result is very startling or contrary to the evidence laid before me by my Police Officers, I institute enquiries as to whether they are to blame in the matter or not ; and to attain this end, I read the depositions taken by the Magistrate if the explanations furnished by my Police are not satisfactory. It is very obvious that without some check of this nature, I could have no hold over the Police after the cases in their charge went before the Magistrate.

4. I found to my astonishment that the depositions in both cases and the sentence in one, had been altered since my perusal of the originals three days previously. I have under lined with red ink the additions, *which as far as I can recollect have been made to the original depositions.*

Lieut. Milligan 73d Regt
versus
Shaik Abdool Ruheem
and
Ramchurn Kahar.
12*th June* 1858.

5. In the case noted in the margin the prosecutor gave to the first defendant, his servant Rupees 50 to keep for him. The defendant acknowledged that he had gambled away the money ; the greater portion of it being pointed out by him, but was acquitted—my Superintendent informs me, on the ground that the case was not one of theft, the money having been entrusted to defendant by the prosecutor. The original order was "acquitted." This has been altered into "warned and acquitted" and the interpolations are inserted for the purpose of shewing that the defendant being very young and thoughtless, a warning was sufficient. A sentence of "warned and acquitted" is absurd. A man may be "warned and discharged," or "convicted" but for some reason assigned "warned," but to warn and acquit a person is the old story of the jury who are said to have found a man "not guilty" of murder but hoped he would not do it again.

Sambhoonauth Dhur
versus
Dedar Bux
14*th June* 1858.

6. In the second case noted in the margin the prosecutor said that one Chundernauth Dhur told him of the theft in his house and he saw the prisoner removing the wood. The Chowkeydar arrested the prisoner with the

wood. The prisoner said the charge was brought from enmity and produced a witness to prove the same, and in this man's evidence a very strong addition has been made to the original deposition. The Magistrate ordered the case to be dismissed, the defendant discharged, and complainant ordered to pay 10 Rs. amends to defendant. My Superintendent was also directed to bring up before me the Chowkeydar for giving false evidence. And these orders were passed without even taking the trouble of examining Chundernauth Dhur, who had brought the theft to the notice of the prosecutor, and who was in fact the principal witness in the case.

7. I have also the honor to submit the depositions taken in a third case in which eleven annas were stolen from the Mint. A Durwan stopped the prisoner with the stolen money, and his evidence is corroborated by two other witnesses, and would have been by a third, who, was, however, not examined. Defendant denied the charge, produced no evidence, and was acquitted, but why or wherefore it is impossible to assign any reason.

8 I am greatly afraid that an examination of the Northern Division Magistrate's case books will shew many other examples of cases decided in the same slovenly, hurried and unbusiness like manner, for it appears to me that, however short the depositions in a case may be, they should distinctly give the substance of the witnesses' statements which certainly cannot be in the last case submitted, or the prisoner would not have been acquitted.

9. But though the decisions in these cases may be susceptible of explanation, the alterations in the depositions and sentence passed, seem to me altogether indefensible. My belief is, that after sentence is passed, a Magistrate has no power to make any alterations in the depositions taken and sentence passed by him except as regards mere clerical errors. I need only ask what the Judges of the Supreme Court would think if material alterations were made in the depositions taken in a case called for by a *certiorari*, or what the public would think of the honesty of Magistrates, if the depositions and decisions taken in any case of importance, and published for general informa-

tion, in explanation of any misstatement, were afterwards found to have been altered for the occasion.

10. I have thought it proper to bring these facts to the notice of the Honorable the Lieutenant Governor of Bengal because I should consider myself very much wanting in my duty, did I not take immediate steps to prevent the recurrence of such extraordinary proceedings.

I have &c.,

(Signed) S. WAUCHOPE,

Commissioner of Police.

On the 28th of June, the last letter with its enclosures was forwarded by the order of the Lieutenant Governor of Bengal to the defendant with a request that he would have the goodness to submit any explanation which he might wish to offer.

In reply the defendant wrote to the Secretary to the Government of Bengal the following letter:

No. ——

TO A. R. YOUNG, ESQ.,

Secretary to the Government of Bengal,

Dated Calcutta Police Office,

The 7th July 1858.

SIR,—I have the honor to acknowledge the receipt of your letter No. 2279, dated 29th June 1858, with enclosures.

I must confess that I have read the letter of the Commissioner of Police with feelings of painful surprise. Mr. Wauchope has accustomed himself to sit in Judgment over my decisions but he has now thought fit to bring against me, one charge at least, which, if true, would render me unworthy of all future confidence on the part of Government. I need scarcely observe that I allude to the charge of interpolating and altering the records in two of the three cases brought to the notice of His Honor the Lieutenant Governor. I hardly know what to say in my defence beyond expressing my regret that a charge so utterly groundless and so decidedly at variance with my habits and notions should have been preferred against me without so much as the faintest shadow of evidence. I entirely and emphatically deny the

charge, and I beg leave to assure His Honor that the copies of the proceeding as furnished by me to the Commissioner are a faithful transcript of all that transpired at the trial of the cases in question. I am at a loss to conceive how Mr. Wauchope should have been led to form an opinion so insulting to my sense of honor as a man and so derogatory to my position as a Magistrate. I flatter myself that the whole history of my humble career as a servant of Government and a member of Society shews nothing to warrant so cruel an aspersion on my character: but in casting it, what does Mr. Wauchope rely upon ? His mere recollection. What opportunity the Commissioner of Police enjoys of looking into and perusing the case book of the Magistrates I do not know, but if, as he says, he was, on the present occasion, enabled to do so, then the assistants in whose charge those books were, must have betrayed their trust and grossly misinformed me, for I am assured that he never obtained a sight of the books.

With reference to the cases brought to the notice of the Honorable the Lieutenant Governor I feel called upon to say but little; I cannot convict prisoners against my own belief, not even to gratify the head of the executive Police, nor can I persuade myself to pronounce them guilty of one offence when sent up on another differing from the first, *toto cœlo*.

In regard to the first case —Sumbhoonauth Dhur *vs*. Dedarbux; the Commissioner of Police observes, that a few days ago Mr. Superintendent Purney under instructions from the Northern Division Magistrate brought before me a Chowkeydar charged with giving false evidence. This is a mistake. I requested Mr. Purney simply to mention to the Commissioner that I thought the Chowkeydar unworthy of confidence. If, vide my letter No. 45 dated 18th June 1858 to the Commissioner, the case were clearer against him I should have committed him for perjury at once under the new Police Act. I did not attach the slightest weight to the evidence of the Chowkeydar, and felt strongly disposed to believe that the prosecution arose from motives of revenge, and I humbly submit that I am not a total stran-

ger to the peculiarities of native feelings and instincts.

In his report on the case of Milligan, the Commissioner has thought fit to be merry on a slight slip of the pen. In the hurry of the moment, for in those days I had to dispose of every case arising in so large a city as Calcutta, Mr. Hume being absent on sick leave, I had written "warned and acquitted" instead of "warned and discharged." It is not often that I make mistakes of this kind and the fact of my allowing such a mistake to remain uncorrected is, I presume, calculated to shew that I am not in the habit of polishing, even into idiomatic accuracy, the statements taken down at the time of trying cases, but leave them with all the imperfections on their head.

In the Mint case, I beg to state that the evidence was conflicting. The prosecutor, a Durwan attached to the Mint, swore that no one was present when he stopped the prisoner, and that Daby Singh came afterwards, whereas the said Daby Singh stated that prosecutor stopped the prisoner in his presence. This circumstance coupled with the notorious fact that Durwans attached to the Mint get a certain percentage for every person they stop with coin, gave rise in my mind to strong doubts of the prisoner's guilt and I felt it my duty to give him the benefit of those doubts. I also thought it improbable that an apparently respectable man like the prisoner, Roopnarain Dutt, should risk so much for such a trifle as eleven annas in copper.

The Commissioner has been pleased to characterize my manner of disposing of cases and to call it "slovenly hurried and unbusiness-like." This is a mere matter of taste and I refrain from dwelling on it, as I believe the Judicial Bench owes it to its dignity to refuse to recognize any right in the Commissioner or any other officer of Police to interfere with it. I humbly submit that if such a right be conceded to the Commissioner, an officer who will in all probability be selected in future from the rank of the Executive Police, and not from the Covenanted Service as at present, the position of a Magistrate of Calcutta would be truly humiliating;

as this is not the first time of Mr. Wauchope taking upon himself a function not belonging to him, I would respectfully submit for the consideration of His Honor the Lieutenant Governor whether I do not barely perform a necessary duty in soliciting that a check may be put upon proceedings which ostensibly adopted with a view to promote the efficiency of his own department seem designed and are certainly calculated to degrade the Judicial Bench and would be unjustifiable on that ground, even if they had been less uncalled for. If it were my purpose to recriminate I should bring to the notice of His Honor the more than "slovenly" and unbusiness-like" because illegal and arbitrary manner in which the Commissioner occasionally performs his duties: very recently I found he had dealt with a case of forgery *Queen* vs. *Nobin and Others*, in which when it was brought up before me by Mr. Superintendent Younan, I was surprised to see that he had examined one of the prisoners as a witness without discharging him at all, and had issued a warrant of apprehension on that deposition; I pointed this out, and requested that the party might be released if his evidence were required, as the statement of one prisoner could not fix another. This circumstance transpired, I believe, one or two days before he called upon me for copies of the cases in question. But my present object is not to retort but respectfully and earnestly to deprecate the repeated and uncalled for attacks of the Commissioner of Police and to solicit the continuance of that support which His Honor has been hitherto graciously pleased to accord to me and without which no public officer, especially one in my position and of my race, can carry on his duties.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) K. C. MITTRA,

Magistrate.

The letter last set out was referred by Government on the 14th of July last to Mr. Wauchope for any observations which he might have to offer and accordingly about a fortnight afterwards Mr. Wauchope sent the following

letter to the Junior Secretary to the Bengal Government:

FROM THE COMMISSIONER OF POLICE, CALCUTTA,
TO THE JUNIOR SECRETARY TO THE GOVERNMENT OF BENGAL,
Judicial Department, Fort William.

SIR,—I have the honor to acknowledge the receipt of your letter No. 2495 of the 14th instant, forwarding for any observations I may have to offer, the reply of the Northern Division Magistrate to the statements made in my communication No. 590 of the 22nd ultimo.

2. In his reply the Magistrate deprecates what he calls my "repeated and uncalled for attacks" on him, and entirely and emphatically "denies that he had interpolated or altered the record in the two cases which I brought to the notice of the Honorable the Lieutenant Governor of Bengal, a charge which he denounces as "utterly groundless" and without so much as the "faintest shadow of evidence."

3. With regard to what Baboo Kissorychund Mittra calls repeated and uncalled for attacks it appears to me that he can have no ground of complaint against me in the present instance in as much as it was necessary for me to institute enquiries into the conduct of the Chowkeydar whom he directed to be brought before me for giving false evidence, or, as he terms it, being unworthy of confidence, and having during these enquiries, discovered in his case book what I considered very extraordinary interpolations and alterations in the depositions, I leave His Honor to decide whether I acted wrongly in forwarding the cases for any orders he might think necessary to pass.

4. The case book in question was brought before me in the first instance on the 15th June and I am positively certain that the *depositions of the two cases were then clearly written out* and there were no alteration or interpolations, I have since seen the book and there are now several, palpable and unmistakeable. The only questions therefore are by whom were these made? And at what period? Before or after the fifteenth June, the date on which I first saw the book?

5. I shall say nothing on the first point, as I do not think the Magistrate will deny that all the alterations were made by him as they are in his handwriting. On the second I wish to make a few observations

6. I have already stated that on the 15th June I saw the case book in which the depositions are recorded and in the two cases in question *there were no alterations, of this I am positively certain*, for I read the depositions over several times being utterly at a loss to guess the reasons which guided the Magistrate in his decisions in the cases, *and these repeated perusals had so strongly impressed their contents on my mind that on the copies before His Honor being received by me I had no hesitations in marking with red ink the alterations which I was convinced had been subsequently made.*

7. *I have lately had this case book again before me* and in the depositions taken in these cases there are now what I have no hesitation in pronouncing to be interpolations *and it is most strange that throughout the whole book alterations should appear in these two cases alone and that they should be the very words I underlined in the copies sent to me by the Magistrate, and forwarded by me to you in my letter No.* 590 *of the* 22*nd ultimo*

8. I shall now proceed to offer a few remarks in connection with the case in which Lieutenant Milligan charged his servant with theft. I stated in my previous communication that the Police officer in charge of this case informed me that the Magistrate acquitted the boy because he was of opinion that no theft had been committed. As the depositions now stand, we are led to believe that the boy was convicted but warned and discharged on account of his youth and penitence.

9. The Magistrate states that the sentence "warned and acquitted" is a slip of the pen for "warned and discharged." An examination of the book will show very plainly that the word "warned and" were written at a different time from "acquitted" and that consequently there can have been no slip of the pen.

10. It is the custom for the European Police officers in charge of cases decided by the Magistrates and who do not see their written orders to enter in my Police Report book the different sentences passed upon prisoners. In this case Inspector Moore entered the word acquitted, and it is owing to my having seen this report, and, knowing that the prisoner had acknowledged his guilt before me, that I was anxious to see the evidence which had produced an acquittal and it was from my seeing in the Magistrate's case book the sentence of acquittal in the face of the confession of the prisoner that induced me to write for copies of the depositions: had my officer entered the Magistrate's order or sentence as "warned" I should most certainly not have taken any further notice of the matter for I should have at once understood that the lad though convicted was warned and not imprisoned because he was very young, very penitent, and had been placed in the way of temptation by his master.

11. Unfortunately Lieut. Milligan is not in Calcutta but having ascertained that Mr. Weskin, an Attorney, was present in the Northern Division Magistrate's Court when the case was decided and had made some remarks on the subject at the time I placed myself in communication with him: he remembers the particulars of the case perfectly and tells me that the Magistrate *acquitted the prisoner because he held that the offence committed was neither theft nor embezzlement thereby* entirely corroborating my Inspector's original statement and my assertion that alterations had been made in that case since its decision.

12. It is with pain that I have been compelled to bring forward these facts but the Magistrate's denial has left me no alternative and considering that I was and am perfectly certain *that there were no interpolations on the 15th June* that there are now several in the two cases I brought to the Lieutenant Governor's notice, *and no others in the book*: judging also from the entry in my report book from the circumstances of the case *and the evidence of an independent gentleman* no second conclusion can be drawn, but that the several alterations must have been made subsequent to the sentence; I leave it therefore to His

Honor to decide whether I should not have been culpably deficient in my duty, had I refrained from bringing the proceedings of the Magistrate to His Honor's notice.

13. The original papers received with your letter are herewith returned.

I have &c.,
(Signed) S. WAUCHOPE,
Commissioner of Police.

In consequence of the above correspondence the Lieutenant Governor was pleased to appoint the present Commission.

I cannot but regret that while so doing, Government should have thought fit to appear in the character of prosecutor. This circumstance cannot but have its weight against my client in the opinion of the public, before which, as well as before the Bench which I have now the honor to address he is placed on trial, and which may not sufficiently attend to the reasons assigned for the adoption of the course, by the learned gentleman who appears to conduct the proceedings on behalf of Government and who has explained that Government undertakes the prosecution solely in consequence of doubts, (doubts in which I do not participate) of the legality of leaving a prosecution under Act 37 of 1850 in the hands of a private individual.

Six charges have been framed against my client, but while their multiplicity has materially contributed to embarrass and distract me in my cross-examination of the witnesses for the prosecution, I doubt whether they raise with sufficient distinctness, the main questions as affecting the character of my client, which I consider to be placed in issue by the correspondence above quoted, and which are as follows :

1*st.* Whether my client *after receipt of Mr. Commissioner Wauchope's letter of the* 15*th of June last* (a point of time in my estimation of infinitely more importance than that selected in the 2nd and 5th of the articles of charge exhibited against my client, viz. the time of *signature* of the entry in the case book) in fact altered, and added to the entries made by him in the case book, in the proceedings on the two cases of Milligan and Sumbhoonauth Dhur.

2nd. Whether, having so altered and added to the entries, he afterwards, when called upon by Government to offer an explanation, falsely denied the fact.

To these I shall now address myself, before examining in detail the six articles of charge exhibited by the prosecution, premising, that if the charge against my client which the fact of the above questions involves, should fall to the ground, the charge involved in the 2nd must fall with it.

In the first instance I shall examine the direct evidence upon which the charge against my client of having altered and added to the entries in the case book, after copies thereof had been called for, rests.

First comes the evidence of Mr. Wauchope.

This differs most painfully from that which the correspondence above quoted led me, before I came into this Court, to expect.

My duty to my client obliges me to state that this witness has in his correspondence with Government, exhibited a disingenuousness of which, had Government been aware, before this enquiry was directed, I am well convinced that this Commission would never have sat, and which must, in my opinion, materially lessen the weight to be attached to his testimony, more especially as that testimony is based on memory only.

I have seldom felt more surprised than when I heard my learned friend who conducts the prosecution state in the opening of his case, and Mr. Wauchope afterwards depose in the witness box, that BEFORE he (Mr. Wauchope) sent in to Government his letter of the 22nd of June last he had sent for and examined, a second time, the case book containing the originals of the depositions, of which he was sending up copies to Government.

In that letter Mr Wauchope states (paragraph 4)—

"I found to my astonishment that the depositions in both cases, and the sentence in one, had been altered since my perusal of the originals three days previously; *I have interlined*

in red ink the additions which as far as I can recollect, have been made to the original depositions:" and this letter he sent in to Government without any allusion to the fact that he had had the case book before him, and had, (he says) ascertained that the passages he underlined in red ink, appeared in the case book as alterations and interlineations.

It is obvious that had His Honor the Lieut. Governor upon receipt of this letter sent for the original case book and had then found that the very passages underscored by Mr. Wauchope, *as if from memory*, had, in the case book, all the appearance of alterations and interpolations, he would have considered the case as fully and conclusively established against my client, by the powerful corrobation which would thus have been given to Mr. Wauchope's memory.

Mr. Wauchope states in cross-examination, that it never struck him at the time, that there was any chance of his memory receiving a corroboration, apparently so convincing. He explains that he had prepared the letter of the 22nd of June in draft before he sent for the case book a second time, and that he did not consider it worth while to alter it, never expecting that the Magistrate would deny that the alterations had been made since Mr. Wauchope's first sight of the book. It may therefore be argued for the prosecution, that after all, Mr Wauchope's original statement from memory in his draft letter was corroborated by *his own* subsequent examination of the case book.

This might have weight had Mr. Wauchope himself been content to rest his case here, and, confident in the unimpeachableness of his veracity, had simply made the statement "after I had underscored what passages appeared to me to have been interpolated I satisfied myself by comparison with the original that my memory had not deceived me."

But how different is the course which he pursues. If up to this point he has been careless, he now becomes disingenuous.

On the 27th of July he writes his second letter to Government, a letter, composed with

great deliberation, in reply to one addressed to him on the 14th.

In this letter after stating at the close of the 6th paragraph "*these repeated perusals had so strongly impressed their contents (i. e. those of the original deposition) on my mind, that on the copies before His Honor being received by me, I had no hesitation in marking with red ink the alterations which I was convinced had been subsequently made*" he goes on to add (in the 7th paragraph) "I HAVE LATELY *had this case again before me* and in the depositions taken in these cases there are now, what I have no hesitation in pronouncing to be interpolations: AND IT IS MOST STRANGE *that throughout the whole book alterations should appear in these two cases alone, and that they* SHOULD BE THE VERY WORDS I UNDERLINED IN THE COPIES SENT TO ME BY THE MAGISTRATE AND FORWARDED BY ME TO YOU IN MY LETTER No. 590 OF THE 22ND ULTIMO."

Could the Lieut. Governor after reading this passage, come to any other conclusion than that Mr. Wauchope had, after sending his letter of the 22nd of June, ascertained the reality of the *most strange* coincidence, upon which he lays so much stress, and that the correctness of his memory was completely set up thereby.

No excuse for carelessness such as that assigned for sending up the former letter from the uncorrected draft could exist, when Mr. Wauchope wrote this remarkable letter of the 27th of July, for he had then before him the defendant's emphatic denial of the truth of the charge brought against him, and must have foreseen that either the summary dismissal of the Magistrate, or such an investigation as is now proceeding, must follow. The paragraph just quoted was better calculated than any thing else which I can conceive, to bring about the former result rather than the latter. It was almost impossible that the phrase "I have *lately* had this case book again before me" could, occurring in a letter written on the 27th of July, have been interpreted to have reference to a date subsequent to the 22d of the preceding month, and being so interpreted, no question would be likely to arise as to the veracity of test applied to the correctness of the accuser's memory.

It may be said that Mr. Wauchope has atoned for his want of candour on the 27th of July, by his voluntary disclosure, when before the Commissioners, of the fact of his having seen the case book a second time before the 22nd of June, a fact of which the correspondence certainly did not disclose the slightest hint, and which therefore could not with any likelihood have been elicited in cross-examination. It would, I think, have tended much more to place Mr. Wauchope *rectus in curia* had it appeared that either the prosecutor while opening his case, or Mr. Wauchope while being examined in chief, had borne in mind the contents of the letter of the 27th of July, but while the incorrect statement in the letter of the 22nd of June (which might be the result of carelessness merely, a carelessness however highly culpable, considering the grave nature of the charge which the writer was making) was carefully explained, no attempt whatever was made to explain the far more serious disingenuousness of the letter of the 27th of July until it was brought forward during the cross-examination.

I would gladly relieve Mr. Wauchope from the imputation of having wilfully attempted to deceive Government (an imputation which it has cost me more pain than can easily be conceived to make, and the occasion for doing which my friend who conducts the prosecution knows, that I made an effort to avoid.) The only means which, after casting about, I can find of doing so, is, to suppose that Mr. Wauchope acted with no very great caution or consideration, while preferring a charge against one, of whose fitness for the Magisterial office, it is evident, as well from the eighth paragraph of his letter of the 22nd June, as from his former Complaints made to Government, he entertained a very poor opinion, and that he neither at first sufficiently noted, nor can now correctly recollect, when in particular he had the second sight of the case book. If we suppose that he made the draft of his letter of the 22nd of June after gaining an impression from his memory that there were passages in the copies of depositions which he was going to send up, which he had not observed in the original, and *intending* to underscore such passages with red ink before the letter should go up in fair copy, that he then got his second sight of the case book, and did not *actually* underscore the passages until after

the second perusal, we may acquit Mr. Wauchope of intentional deception; but then, the corroboration of his memory afforded by the coincidence which he describes in his letter of the 27th of July as so *strange*, loses all its force.

It will be observed that the hypothesis just put forward, supposes carelessness upon Mr. Wauchope's part, hardly one whit more gross than that to which he confesses; *as he had avowedly, at some time before his letter of the 22d of June went in* seen the case book a second time, but still did not take pains to correct his draft so as to accord with that important fact.

Look at Mr. Wauchope's evidence in whatever light you will, I think that I am at any rate entitled to deal with its statements as based upon memory alone, without the imaginary corroboration upon which I have already bestowed so much attention.

This being granted, I feel no difficulty in dealing with it, as I find that the other corroborative test proposed or rather very strongly insisted upon, by Mr. Wauchope himself in his correspondence with Government, turns out, upon examination, to be equally fallacious with that just disposed of.

In Mr. Wauchope's letter of 27th of July (a laboured reply it will be observed upon the defendant's case) in the fourth paragraph there occurs the following passage—"The case book in question was brought before me in the first instance on the 15th June and I am *positively certain that the depositions of the two cases were then clearly written out and there were no alterations or interpolations.*"

Again, in the sixth paragraph of the same letter, the following—"I have already stated that on the 15th of June I saw the case book in which the depositions are recorded, *and on the two cases in question, there were no alterations, of this I am positively certain, for I read the depositions over several times &c.*"

Again, in the twelfth paragraph of the same letter the same assertion recurs "I *was and am perfectly certain that there were no interpolations on the 15th of June.*"

I must confess that when I was first asked to undertake the defence of this case, the task appeared to me in the face of the above assertions, connected with the rest of the correspondence, almost hopeless: it appeared that there were now ascertained to be extensive alterations and interpolations in the case book, whereas the Commissioner positively asserted that when he first saw the record it was fairly written out, and disclosed on the face of it no alterations or interpolations, and these assertions, accompanied by the statement that he had read over the record several times. I could not bring myself to believe, nor could I think that the Commissioner would ever be led to the conclusion that Mr. Wauchope had been guilty of deliberate falsehood, and it seemed next to impossible that his memory should, after such repeated perusals, be mistaken, as to the palpable fact of a record, once quite fair, being now defaced by such extensive alterations and interpolations.

It is now however quite certain that his memory must have wholly deceived him.

This is discovered on turning to the case book now before the Commissioners.

I refer to Milligan's case.

The interpolations and alterations in this case as assigned in the 2nd charge, now on trial, as having been made in the deposition of the prosecutor Milligan subsequent to the 15th June, are as follows—" in an excited state of mind" and further on, " I asked him for my money. He said he had spent the silver. He said this without a moment's hesitation." The charge in this respect follows Mr. Wauchope's underscoring of the depositions.

It is therefore admitted by the prosecution and the accuser, that if, in the case book as it now stands, there appear in Milligan's depositions, alterations or interpolations other than those just set out, the same existed before the 15th of June.

Now, looking at the case book, we find in the course of Milligan's deposition as it now stands, in addition to those above set out, the following:

In the fourth line the word " missed" struck out with the pen and the word " gave" interpolated instead.

Between the fifth and sixth lines the words "to Abdool to keep" interpolated.

In the seventh and eighth lines the words "while I was searching for the missing property" struck out with the pen.

In the eighth line the words "on that day" interpolated.

In the ninth line the words "in the kitchen" interpolated.

In the ninth line the words "tied up therein" interpolated.

In the tenth and eleventh line the words "in the kitchen I made over the first prisoner to custody" struck out with the pen.

Could a short deposition consisting of but eleven lines, in which so many interpolations and alterations occur, be said to be "clearly written out?"

The phrase used by Mr. Wauchope, and just quoted, shows plainly that Mr. Wauchope, when he wrote it, was referring to the evidence of the eye, and not of the intellect, as defining what he termed alterations or interpolations, and render impossible, as applied to this case, (Milligan's), the explanation which he attempted during cross-examination, with reference to the same words, as applied to other entries in the same case book; and which he pronounced, when shown to him in cross-examination to be "*clerical errors.*"

Moreover the alteration from "missed" to "gave" and the striking out of the words "while I was searching for the missing property" and the substitution for them of "to Abdool to keep" have, in a legal point of view, a far more important bearing upon the decision in Milligan's case than any of those pointed out by Mr. Wauchope.

Neither to the eye nor the intellect could it therefore appear, upon a really careful perusal of the deposition of Milligan, as it admittedly stood before the 15th of June, that it disclosed "no alterations."

What then becomes of Mr. Wauchope's reliance upon his memory in consequence of his having "*read over the depositions several times*"?

Is it not probable that this reiterated perusal had no existence, except in his imagination only, when he was writing of what had occurred six weeks previously?

Moreover the existence of the extensive alterations above pointed out as now existing in the case book, but not mentioned by Mr. Wauchope in his letter to Government of the 22nd of June, show with what little care Mr. Wauchope proceeded, while making against a brother Magistrate the serious charges contained in that letter. He inspected the case book a second time before sending in that letter, but his inspection must have been of the most cursory description, otherwise the alterations and interpolations which I have just pointed out would *then* have forced themselves upon Mr. Wauchope's attention; and he would either, if he considered them to have been introduced since the 15th of June, have noticed them in the letter which he then sent up to Government, or, had he recognized them as having existed at the time of his former perusal of the book, would have been saved from making the inaccurate statements contained in his subsequent letter of the 27th of July as to the depositions having been "*clearly written out*" *without any alterations or interpolations* when he first saw them.

I must also bring to notice a further inaccuracy into which Mr. Wauchope has fallen, in the representation made by him to Government, as to the state of the case book, as affording a test of the accuracy of his statement with regard to the interpolations.

This occurs in the 7th and 12th paragraphs of his letter of the 27th of July, in the first of which he remarks—"*it is most strange that throughout the whole book alterations should appear in these two cases alone.*" And again, "*there are now several (interpolations) in the two cases I brought to the Lieutenant Governor's notice and no other in the book.*"

The inference intended is plain—"There are now alterations and interpolations in Milligan's case and the other, whereas, according to my recollection when I first saw them, the cases were clearly written out, and the accuracy of my recollection is borne out by the fact, that

there are no alterations or interpolations elsewhere in the book."

Now this is not the fact as a reference to cases at pages 19 and 28 in the case book will show that they contain alterations and interpolations of more or less consequence.

This affords an instance of the carelessness with which Mr. Wauchope allowed himself to make assertions, which apparently corroborated the truth of the charges which he was making against my client.

He explains that he considered the alterations and interpolations in other parts of the book "mere clerical errors," but his use of the expression appearing in the first of the passages above quoted shows that he was alluding to alterations which the eye would detect rather than the intellect, and moreover, in the case at page 19 or 28 of the case book the interpolations of the words—"I think there was a deficiency of about 3 maunds worth 2 Rs. 4 As." is of great importance to the correct decision of the case, as the mention of the value of the articles is essential to show that the Magistrate had jurisdiction in the matter.

I refrain from more than a passing notice of Mr. Wauchope's want of candour in dealing with my client, as evinced in his letter of the 16th of June, in which no mention is made of the object with which the Commissioner applied for the copies asked for in that letter, nor made any allusion to his previous sight of the case book. The letter indeed seems studiously calculated to deceive the Magistrate, and to lead him into the belief that the copies were required to enable Mr. Wauchope to make enquiries into the conduct of the Police. Mr. Wauchope says, that when he wrote this letter, he was under the impression that my client was aware of his having already had the case book before him. This I can hardly understand, as the Magistrate, had he known of that fact, must at once have seen that Mr. Wauchope, having already seen the originals, could not require copies, to enable him to examine into the conduct of his subordinates. It is moreover in evidence, the fact having been elicited during the cross-examination of the witness Purney, that *before* this letter was written Mr. Wauchope HAD HELD and

concluded, all the enquiry which he intended to make into the charge against the Chowkeydar Khodabux, and had recorded his decision in the "defaulter's book."

I leave it to my learned friend who conducts the prosecution to explain why Mr. Wauchope should consider it necessary to resort to proceedings the very reverse of straight forward, and the result of which actually was (whether intended or not) according to Mr. Wauchope's account of the matter, to set a trap for the Magistrate whom he was addressing.

I now proceed to consider the direct evidence, other than Mr. Wauchope's, upon which the main charge against my client rests.

The most material is that of Mr. Roberts, the Deputy Commissioner. Upon this evidence I must in the first place remark that it seems to me most singular that no allusion whatever should have been made to it by Mr. Wauchope in his correspondence with Government.

This is the more remarkable as in the twelfth paragraph of his letter of the 27th of July after alluding to the pain which he feels in bringing forward the charges against my client he enumerates and sums up the reasons which he had for feeling confident of the accuracy of those charges. It is (to borrow an expression from Mr. Wauchope) "most strange" that he should not have added to those which he mentioned. "Moreover my Deputy Mr. Roberts assisted me at my first perusal of the case book, and I find that he is equally positive with myself that the words "warned and" and "I am very young and did not know what I was about" have been since interpolated.

The counsel for the prosecution very ingenuously suggested in the course of examination an explanation which Mr. Wauchope had not offered while under cross-examination, *viz.* that Mr. Wauchope did not feel it necessary in his corresponding with Government to mention any evidence corroborative of his own, upon *facts within his own knowledge*, considering that Government would be content with his own simple assertion of such facts.

Mr. Wauchope, however, throughout his letter of the 27th of July, does not lose sight of the fact, that after all the foundation of the case rests upon *memory* only, that being the only means by which the state of the case book on the 15th of June can be ascertained; and the accuracy of that memory he is very careful to set up by allusion to imaginary coincidences. It appears therefore to me, that it could not have failed to strike him how very important it would have been to cite the memory of another as bearing witness together with his own, had the existence of that witness been at that time present to his mind

Were Mr. Wauchope and Mr. Roberts men from another sphere of life, the conclusion to be drawn from the omission of the name of the latter from the list of witnesses until a trial had been directed by Government would be obvious. All however that I can now be allowed to infer from the omission, is, that Mr. Wauchope did not, when he wrote the letter of the 27th of July, consider that Mr. Roberts' means of observation of the original state of the case book, had been by any means so ample, as at this further distance of time, he conceives them to have been.

Mr. Wauchope and Mr. Roberts have, according to their own representation, of late talked this case over a good deal together. It is very well known what a treacherous part the suggestive faculties of the mind will act when this is done; without being conscious of the fact those who thus talk over what has passed, receive impressions from one another, and finally acquiesce in the same account, to the sum of which each has in fact brought his contribution, though they continue to imagine that the testimony of each remains independent of that of the other.

It is thus that I regard Mr. Wauchope, plus Mr. Roberts, as in the present case forming a body of evidence of very little more value than Mr. Wauchope solus.

I consider that these gentlemen are now much deceived by memory, warped by the frequent comparing of notes, above alluded to, as to what they represent to have been the minute care with which the case book was perused by them in the first instance.

In the first place, I can see no occasion which existed for this reiterated examination of a very short and very simple record, contained in a single page of the case book, and, in the second place, had such repeated perusal actually been had, it is hardly possible that Mr. Roberts shoud have derived therefrom an erroneous impression as to the original state of the record, of precisely the same nature as was derived by Mr. Wauchope.

Mr. Roberts owned to me in cross-examination, that he had read over Mr. Wauchope's letter of the 27th of July before it was sent in to Government, and he, of course, stated that had it contained assertions which he knew to be contrary to the fact, he would have suggested their being corrected.

He also states that such corrections (if any) as he did suggest, were attended to.

Mr. Roberts then, must be taken to have, on the 27th July, concurred with Mr. Wauchope in the representation, thrice reiterated in the course of that letter, that when the case book was seen by those gentlemen on the 15th of June the record of Milligan's case was clearly written out and contained no alterations or interpolations.

That case book has, in the course of the trial, been again put into Mr. Roberts' hands, and he has at the request of the Counsel for the prosecution been requested to peruse the record in Milligan's case and to point out in what respect, the record in its present state differs from that which he saw on the 15th of June.

He has done so, and now, when on his oath, he has pointed out but one passage of seven words as having been interpolated in Lieutenant Milligan's deposition, since the 15th of June, but has not pointed out, or even hinted at, any other alteration or interpolation and which did not appear there on the 15th of June.

Let the Commissioners now cast their eye over that record with the exception of those seven words, and say whether it would not be a manifest absurdity to call it "clearly written out" and a plain untruth, to say that it contains "no alterations or interpolations."

What then is the value of the memory of the Commissioner or Deputy Commissioner upon which rests the very foundation of the charges brought against my client ?

The inaccuracy of the statement as to the original fairness of the record, had suggested itself to me before Mr. Roberts was put into the witness box, and, on this account I was anxious that his memory, as to the original state of the record, when he first saw it, should have been tested by its being read over to him as it now exists, he being at the same time requested to name those passages, which, while it was so being read, might appear to him to differ from those which he had formerly read, I objected to his mental recollection being, in the first instance, assisted (or, as my client could contend, deceived) by the eye ; my friend however declined the test proposed by me, and the Commissioners overruled my objection as to the book being put into his hand.

At Milligan's case, as I expected, the witnesses' eye was at once caught by the words " warned and" and the words "I am very young and did not know what I was about" which are written with a different pen and with quite a different ink from the rest of the entries in that case.

These he decidedly, and without a moment's hesitation, pronounced to be interpolations, but here his confidence in what he supposed to be his memory ended. There was nothing in the hand writing to guide him to another passage, and after some delay he pointed out two other alterations the one consisting of the words " he said this without a moment's hesitation," being a portion of a much longer passage said by Mr. Wauchope to be an interpolation, and the other, consisting of the striking out with the pen of three words, a supposed alteration to which Mr. Wauchope made no allusion.

I take this witness's silence on the subject of the present appearance of Lieutenant Milligan's deposition, to be clearly conclusive of the fact, that there must have been on the face of it, when he saw it on the 15th of June, very extensive alterations and interpolations, otherwise one would have expected his first exclamation upon the book being put into his hands

on the present occasion to have been "Oh here there has been very great alteration." He might not indeed have been able to distinguish accurately between the new and the old alterations, but of the general fact of the record having been tampered with, he would have had no doubt.

To the fancied detection of the words "warned and" and "I am very young &c." I believe that Mr. Roberts may have been guided partly by memory *as well as by* the eye, but that memory, one not actually referable to the original state of the record, though Mr. Roberts might imagine it so to be, but very probably to that which had been brought to his notice in the course of his interviews with Mr. Wauchope.

To one of these Mr. Roberts has deposed on cross-examination. This took place about the date of Mr. Wauchope's receipt of the copies of the depositions furnished by my client: Mr. Roberts' impression is, that on that occasion, he stated, in answer to a question put to him by Mr. Wauchope, that the words "warned and" were not in the case book when he saw it on the fifteenth of June, and that he made this statement before the copies of depositions were put into his hand. He states, however, that they were put into his hands almost immediately afterwards; and we have it in evidence that Mr. Wauchope had previously underscored in red ink the passage "*warned and*" and the words almost immediately above it "*I am very young and did not know what I was about.*" The under lining would catch Mr. Roberts' eye, and I feel by no means assured that it might not very likely have done so as respects the words "*warned and*" before Mr. Roberts made any statement respecting them. That statement and the sight of the underscored depositions being, according to his own account, so nearly contemporaneous, I am the more inclined to suppose this to have been actually the case, because Mr. Wauchope has made no mention of this interview, which would probably have remained vividly upon his memory, had it been marked by Mr. Roberts' corroborative statement, made (as the last named gentleman imagines) before he was aware of the fact of the words "warned and" appearing in the copies, at any rate we are certain that

Mr. Roberts' attention had been drawn to the two passages, which he has now identified as alterations, before his present examination, and that he was well aware of the fact that Mr. Wauchope believed them to be alterations made in the record since it had first been perused by them. It appears doubtful from Mr. Roberts' evidence whether his attention had been so carefully drawn by Mr. Wauchope to the other passages supposed to have been interpolated; and this may account for Mr. Roberts' positive assertions corroborative of those of Mr. Wauchope respecting the first two passages, and for his hesitation regarding the others, which resulted finally in his contradicting Mr. Wauchope in part respecting them.

Mr. Wilkie is the last of the witnesses who speaks directly to the fact of alteration. But his testimony is extremely weak. He saw the case book the evening after the trial of Milligan's case, but cannot particularly say whether he took notice of the decision, though he adds "he must have looked at the result because he looks at the results of all cases." *He thinks* the words "warned and" were not there, and says that had they been, they would have struck him "as remarkable." But he owns that the case, not being one of conviction he had no duty to perform connected with the decision, and therefore his notice of it would only be casual and objectless, and therefore, it appears to me in its result of the most trivial importance.

Mr. Wilkie would have thought "warned and acquitted" a remarkable decision. His legal criticism would then have been considerably more acute than my own. I have no doubt he now thinks that the decision would have appeared to him a strange one. It might however be worth while to enquire how much of his legal acumen has come to him since the above verdict has been made so much the subject of discussion within the precincts of the Police Office; and perhaps the same remark may not be wholly inapplicable even to Mr. Roberts' learned opinions on legal phraseology.

Having now dealt with the direct evidence as to the alleged fact of alterations having been made in the case book, since the 15th of

June, I now proceed to weigh the probabilities which bear upon the same fact.

It is clearly established by the evidence of Mr. Weskin, the managing clerk of Mr. Gillanders, an Attorney of the Supreme Court, who happened to be at the Police Court, when my client decided the case of Milligan *vs.* Abdool Ruheem and another; though not himself engaged in the case; that my client actually did warn the defendant Abdool Ruheem at the time when he was discharged from custody; and also that he enquired into the age of the accused: nothing, therefore, seems *primâ facie* more natural than that a record should be made at the time, of the fact of the warning, and of the result of the enquiry.

The only thing which seems a little odd, is, that the warning and the statement as to age should be made in a style of writing, which, though that of my client, who made the rest of the entries in the case, is very different from that of any other portion of the entries; and is also apparently made with a different pen.

My client has no particular recollection as to the time and manner in which the additional words were entered and therefore does not attempt to give a statement explaining in fact the difference between the two styles of writing, both avowedly made by his own hands. It appears, however, to me, from the evidence of Mr. Weskin, not difficult to supply an explanation upon conjecture.

It seems, that after the examination of the prisoners had been concluded, my client gave some intimation that he did not intend to convict ; Mr. Weskin is under the impression that this information was conveyed to him by the manner in which my client shook his head ; but at any rate he understood, that at that time, my client had come to his final decision on the case ; without which, it would have been most improper for Mr. Weskin to have offered to the Magistrate his remarks, tending to show that the facts established in evidence would warrant a conviction It seems then to me highly probable, that it was at this point of time, that my client entered the word "acquitted" in the case book.

A discussion thereupon ensued between Mr. Weskin and the Magistrate, in which theformer held, and the latter combated, the position that the facts in evidence amounted to an offence under Act 13 of 1850 commonly called the Breach of Trust Act. This lasted for some minutes, and it is not unlikely that the Magistrate, though not convinced, was somewhat shaken in his opinion, and thought it well to warn the prisoner Abdool that he had a very narrow escape. Mr. Weskin deposes directly to the fact that the warning was given after the discussion; and, therefore, supposing the Magistrate to have entered the verdict to which he had come, before the discussion; there remains nothing strange in the fact that entries made with an interval of minutes between them, during which, in the heat of argument, the Magistrate would probably put down his pen, and might also have changed his position at the desk, should differ materially in the style of writing. It seems also probable that at the time when the Magistrate recorded the warning, he would also make a note of the fact, previously ascertained, of the youth of the prisoner warned; and the supposition of this interval of time between the ascertainment of the fact, and its being recorded in writing, will also explain what, at first, seems to bear against my client in the evidence of Mr. Weskin. The witness says that when the prisoner Abdool was asked his age, he answered with precision "13 or 14 years" supposing the witnesse's memory to be quite correct, the answer of the prisoner, if recorded at the time, should have appeared in the prisoner's own words. But on the hypothesis that some minutes had elapsed before the answer was noted by the Magistrate, there is nothing strange in his entering the general result of his enquiry in the words "I am very young &c." without mentioning the precise age.

Mr. Weskin is the witness upon whose corrobation of his statements Mr. Wauchope has laid such stress in the eleventh paragraph of his letter of the 27th of July, and whom he again refers to in the twelfth paragraph of the same letter as "an independant gentleman"; nor does it seem to me that any thing has come out tending to throw the slightest degree of doubt upon his testimony.

It is true that Mr. Inspector Moore, who was present at the Police Office during the trial of Milligan's case, states, that he did not hear the Magistrate warn the prisoner, or ask his age, but this witness has stated in cross-examination that he thinks it possible that the Magistrate might have addressed words to the prisoner so as to be audible by Mr. Weskin without being so by him, Moore.

Mr. Inspector York also was present at the trial of Milligan's case, and does not recollect to have heard the warning, or the enquiry as to age.

But the fact of these two witnesses not marking at the time or recollecting, at this distance of time, words of no very particular moment, does not contradict, and hardly weakens, the testimony of one who did hear and note these words.

Moreover, the fact is not to be altogether lost sight of, that the two witnesses last named, are Police Officers, subordinate to Mr. Wauchope, whereas Mr. Weskin is an independent witness, in no ways connected with either party concerned in this case.

There is then, I contend, a great probability arising from the fact of the warning having been given, and the question as to age having been asked, that the fact of the warning, and the result of the question, would be recorded at the time, and as it was incumbent on my client in the course of his official duties to make that record, the probability amounts to the legal presumption "*omnia case rite acta.*"

On the other hand, there is the great improbability, that if no entry had been made at the time, and my client with a view to deception, thought fit to make the entries afterwards, he would do so in a hand, so strikingly different from that which he used when writing the original depositions ; the difference between the two hands is so great, that Mr. Roberts states, (and the fact is obvious to any one who will take the trouble to look into the case book) that in writing the words " warned and" and " I am very young &c." no attempt was made to assimilate them to the hand writing in the immediate neighbourhood of which they ap-

pear. Yet both these entries, and the contiguous passages, are avowedly written by one and the same person, my client. If then he did tamper with the record he must be supposed to have done so in a manner almost studiously, calculated to lead to detection. Nay, if credit is to be given to Mr. Wauchope's evidence as to what constitute the interpolations, made subsequently to the 15th of June; not only do the two, just noticed, differ in style, and appear to be made by a different pen, from the style and pen used in making the original entries on the 12th of June, but from the style and pen used in making other interpolations, which Mr. Wauchope characterised as spurious.

That a person, committing, what he looked upon as a fraud, should be so ingeniously careful to provide means for his detection, as to introduce his forgeries into different parts of the same page of writing, in two different hands, and by two different pens, on one and the same occasion is past belief.

Again, of the alterations pointed out by Mr. Wauchope as spurious, some appear to have been made without sufficient motive, and others to be necessary to the coherence of the text.

Let me request the Commissioners to turn to the copies of depositions containing the passages underscored by Mr. Wauchope in red ink.

First those in Milligan's case.

The first underscored passage "in an excited state of mind" is, I submit, necessary to the coherence of the text; without it, what was there to lead to the fact stated in the next sentence "my suspicion being aroused"?

Again, of the second supposed interpolation, the greater part "I asked him for my money he said he had spent the silver" containing a direct confession of the prisoner's wrongful appropriation of the money, go rather to upset than support, the verdict, with the object of reconciling which, with the evidence, my client is supposed to have altered the depositions.

Next, in Sumbhoochunder Dhur's case, the supposed addition tends, in hardly an appreciable degree, to support the decision, if not justifiable without it.

My client says that he acquitted the prisoner under the impression that he, and the prosecutor, a Mahomedan and Hindoo, were on bad terms, and that the case had been trumped up by the one against the other, from motives of enmity

To support this view of the case, there was the assertion of the prisoner, assigning a probable cause of quarrel, and the evidence of a third person, deposing to the existence of the feud, and speaking to the cause assigned for it.

It adds very little to this, to put into the mouth of the witness just alluded to, the additional words " prosecutor in fact once threatened to drive him from his homestead" and it must be observed, that Mr. Roberts has a distinct recollection, that when he first perused the record of this case, there was something in the evidence about " threat or a variance or a quarrel."

I shall not weary the Court by going into the evidence bearing upon the alleged interpolation in the case of Shumbhoonauth Dhur, at any length.

If I have shaken the dependence to be placed on Mr. Wauchope's memory or candour, by my examination of his evidence, as bearing upon Milligan's case, there is nothing to bring home to my client, the misconduct imputed, in connection with that of Shumbhoonauth Dhur, as the corroboration of Mr. Wauchope's testimony, as bearing on the latter case, is the faintest possible, Mr. Roberts hardly ventures to speak to the alleged addition even from impression.

To recapitulate. The doubts, which a comparision between the facts stated in the correspondence with Government, and the facts as they have come out in evidence, raises as to accuracy of Mr. Wauchope's evidence, and the candour of his statements and conduct, and as to the accuracy of Mr. Roberts' memory, and the degree of care used in the inspection, in which he at first assisted. The discrepancy between the testimony of Mr. Wauchope and Mr. Roberts, as respects the identification of the supposed spurious passages, the probability that a record would be made at the time, of facts,

which are proved by independent evidence to have transpired at the trial ; the improbability that my client, if bent upon falsifying the record, would do so, in a hand differing in a most marked manner, from that used in the original record, and would even use two different hands in making the fraudulent interpolation on one and the same occasion ; and the irrelevancy and objectless character of some of the alleged alterations, combine, in my opinion, to render it impossible, that a charge, involved in the first of the questions which I propounded in the outset of this defence, a charge materially affecting the character of a public servant in high judicial office, and of long standing in public employ, should be considered by the Commissioners, as established, upon the evidence now before them.

If the alterations were not after the 15th of June, the charge based upon the denial of their having been so made, is, of course, at an end.

Having then, I conceive, satisfactorily disposed of the broad question affecting the character of my client, I shall proceed to deal in detail, and as shortly as possible with the several charges upon the record.

As respects the first and fourth of those charges I must enter upon behalf of my client, a protest, against one, who has the honor to be included in Her Majesty's Commission of the Peace, being called upon to answer charges, the gist of which is, that he has decided a case tried by him, improperly and unjustly.

I do not think it necessary to cite cases, in order to establish the principal upon which the Court of Queen's Bench has always acted, in granting or refusing criminal informations against Justices of the Peace for alleged misconduct in their office, requiring in all cases proof that the *motives* for the misconduct complained of was dishonest, oppressive, or corrupt, but I cannot refrain from quoting the impressive words used by that great Judge Lord Chief Justice Mansfield, in the case of *Rex* vs. *Young and Pitts* (reported 1 Burr 556) which was a motion for an information against Justices for arbitrarily, obstinately, and unreasonably, refusing to grant a "licence;" where his Lordship

said "if it clearly appears that the Justices have been partially, maliciously, or corruptly influenced, in the exercise of their discretion, and have consequently abused the trust reposed in them, they are liable to prosecution by indictment, or information, or even possibly by action, if the malice be very gross, and injurious. If their *judgment* be wrong, yet their *heart* and *intention* pure *God forbid that they should be punished.*

In further support of the principal, I will simply refer the Commissioners to the cases of In re *Fentiman* 2 Adol and Ellis p. 127 *Rex* vs. *Barron* 3. B. and Ald 432 *R. V. Cox* 2 Burr 785 and *R.* vs. *Plamer* and Baine 2 Burr 1162 which cases are cited in Chitty's Burns' Justice of the Peace.

I feel that I may be incurring blame in the eyes of those who regard the dignity and independence of the judicial office as worth preservation, by answering these charges at all, except by way of demurrer, and I shall do so but very shortly.

Granting the decision in Milligan's case to have been an acquittal, though I may not, as a lawyer, consider that such a verdict was warranted by the evidence, I can very readily conceive how one, not educated professionally in the technicalities of the English Law, might come to a different conclusion: Abdool Ruheem was indicted for theft.

The evidence was, that Lieutenant Milligan had given Fifty Rupees to this Abdool, his menial servant, to keep, and that the latter had afterwards been induced to gamble away a part of the money

Now the well known general Rule of Law is, as laid down in Archbold's Pleading and Evidence in criminal cases, edited by the late Chief Justice Jervis (p. 283—13th edition) that "where goods are delivered to a man upon trust, or are taken by him with the owner's consent, he is not guilty of larceny by converting them to his own use; the rule, as given in Haile's Pleas of the Crown is, if A lend B a horse and he ride way with him; or, if I send goods by a carrier and he carry them away, or, if any other bailee convert the goods bailed, to

his own use, it is not larceny because the original taking was *bonâ fide*, and without fraud."

To this general rule there is an exception, grounded upon a peculiarly technical construction of the English Law. I quote again from Archbold's Pleading and Evidence p. 285 "If a servant who has merely the care and oversight of the goods of his master, as the butler of plate, the shepherd of sheep, and the like; embezzle them, this is a larceny at Common Law, because the goods, at the time they are taken *are deemed in law* to be *in the possession of the master; the possession of the servant in such a case being the possession of the master.*"

It would not appear to me very extraordinary, should it be supposed that one, brought up in the Mofussil school of law, might not be very well up to this doctrine of constructive possession.—"moreover, if aware of it, he might very well think, that the application must be limited to those cases in which the custody of the goods may be in the way of the special duties of the servant to whom they are intrusted; as for instance, in the case of plate entrusted to a butler, sheep to a shepherd, and so on, whereas in the present instance the servant Abdool was a mere personal attendant, not a cashier.

Mr. Weskin's evidence from recollection, of what passed between himself and the native Magistrate, seems to point to some legal difficulty of this description, as having been then present to the mind of the Magistrate, as Mr. Weskin says, that the Magistrate did not consider that Abdool's case was brought within the law, because the money was entrusted to him "casually."

Again, with reference to the case of Shumbheochunder Dhur *vs.* Dedarbux, there was evidence of an old grudge having existed between the prosecutor and the accused, and, provided the Magistrate believed, upon that evidence, and what he observed of the personal bearing of the parties, that, out of that grudge, the proceedings before him had originated, it was his duty to give the decision which he has recorded.

The matter is a matter of Judgment only, and to arrive at that Judgment is in the pro-

vince of the Magistrate only, not of those who choose, without hearing the evidence, or observing the manner in which it was given, to constitute themselves critics upon his decisions.

Considering the nature of the case, I am much inclined to the opinion, that the Magistrate was quite right in his decision.

The accuser was no prowling pilferer, but the permanent next door neighbour of the accuser. He was charged with stealing wood valued at half an anna, (!) and of so doing within view of a man, smoking in the door way of the Hut where the theft was effected.

It was, in all likelihood, the extreme improbability of this story, which partly influenced the Magistrate in omitting to examine the alleged eye witness, whose name points him out as a relative of the prosecutor, an omission of which so much has been made by the prosecution.

The evidence however suggests to me an additional reason for such omission.

Mr. Roberts, when examined in chief stated, that the evidence which the witness, not examined by the Magistrate was to give, was represented to him (Roberts,) on the previous day, to be to the effect that the witness had brought the theft to the notice of the *chowkeydar*.

Another witness has stated that it is the custom to apprise the Magistrate before the trial, shortly, what statement each witness is expected to make.

If we suppose then, that the evidence which Chundernauth was expected to give, was stated before the Magistrate, as Mr. Roberts at first described that it was stated to him, there is no difficulty in divining why the witness was not called, after the prosecutor had stated in evidence that Chundernauth brought the theft *to his* (the prosecutor's notice,) and that he (the prosecutor,) not Chundernauth called the Chowkeydar.

That the Magistrate at the time conceived that there was ample grounds for his decision, is apparent, from his having challenged atten-

tion to the case by sending up a complaint against the Chowkeydar.

Probably he would be partly led to infer that the Chowkeydar had lent himself as a tool to the prosecutor from the fact of the accused having been arrested in the first instance without a Warrant, although the Chowkeydar had no view of the offence, and there was no reason why, as the accused was a known person, whose permanent dwelling was ascertained, a Warrant should not have been first applied for

I think that I have already disposed of, in my opening of the defence, what I conceive to be, the *real* gravamen of the second, fifth and sixth charges, viz. the tampering with the case book *after the copies of depositions had been called for*, and the false denial of such conduct in the explanation offered to Government ; I submit that the object of the enquiry would be best attained, by the amendment of the charges just alluded to, by making the critical point of time, after which the alteration is charged to have been made in the case book, the time of the depositions being called for, instead (as now appears on the charges) the time of the *signature* of the entry in the case book.

I do not incline to think that the alteration of the entry, after signature, but while the parties were present, would be an offence, or even an impropriety, and if this view be correct, the charges alluded to in their present shape, are not such as a Magistrate should be called upon to answer, and moreover, without such an amendment as I have suggested, the sixth charge would fall to the ground, as a perusal of my client's letter to Government will shew, that it does not contain in terms, any denial of an alteration having been made in the case book after signature, though it does most emphatically negative the charge, that such alteration had been made after the copies of depositions had been called for.

I may here casually remark that it is the denial only which erects into such importance, (as affecting the character rather than the official conduct of my client) a charge which otherwise would, even if established, have been of no very grave weight.

It is no doubt the duty of a Magistrate to enter carefully the substance of the depositions made before him; and competent authorities declare that this is best done in the very words of the witness.

It has not, however, even in England until a very recent period, been the custom of Magistrates to attend very carefully to the performance of this duty.

In point of fact, says the Editor of the last edition of the Standard work, Paley on Summary Convictions (p. 246) "before the Statute 11 and 12 Victoria (chap. 43) the constant practice was for justices at the time of their judgment, merely to take minutes of the charge examination and other proceedings, without attention to precise form, to serve as *memoranda* for drawing up a more formal statement, if they should be required to file the conviction at the Session, or return it to a writ of *certiorari*.

Supposing this duty to have been carelessly performed in the first instance and the Magistrate, when called upon to make his return of the proceedings, to recollect that an important statement was made in evidence before him, which upon reperusal of his case book he finds that he has omitted to record. I imagine that not only would the Magistrate be justified in introducing that statement in his return, but that it would even be his duty to do so.

In the case of *The King* vs. *Barker* reported 1 East 186 a person against whose goods a warrant of distress had been issued by the Mayor of Yarmouth applied to the Mayor's clerk and obtained a copy of the conviction which had been drawn up when the warrant was granted. Considering himself aggrieved he afterwards obtained a writ of *certiorari* directed to the Mayor to return the conviction to the Court of Queen's Bench.

The Mayor returned a record of conviction in a different form from that of which his clerk had furnished a copy.

A criminal information was moved for against the Mayor for so doing, but the Chief Justice Lord Kenyon refused the information, and said

in the course of his judgment "supposing that the facts as they really happened will warrant the Magistrate in the return he has now made the contrary of which is not imputed, I am of opinion that it was not only legal, but laudable in him to do as he has done, and he would have done wrong if he had acted otherwise."

It would seem from this that these painful proceedings have arisen from too great a precipitancy upon the part of Mr. Wauchope to send up a complaint against his colleague without making sufficient enquiry into what had actually transpired at the trial.

It remains only for me to deal with the third charge in which it is imputed to my client that he falsely alleged that he had "warned and discharged" the prisoner Abdool but that in the hurry of business he had written the words "warned and acquitted," whereas in fact he had pronounced and intended to pronounce an acquittal.

I would first observe that a great deal has been said respecting these phrases "warned and discharged" and "warned and acquitted" and much ridicule and learning expended upon the latter by the officers of the Executive Police from the Commissioner down to the youngest Inspector, the point and correctness of which I wholly fail to realize.

Great Judges on the English Bench have been in the habit of it, after a prisoner has been acquitted by the Jury, to warn the prisoner before allowing him to quit the dock. How often have we heard, or read, such an address as the following—"Prisoner, the Jury have taken a very merciful view of your case, you are discharged, but I must warn you that you have had a very narrow escape and that had the Jury found you guilty I should have felt it my duty to pass a sentence of transportation."

A native Magistrate of Calcutta may surely be excused the following such high example even though it may not have the complete approval of the Commissioner of Police.

I am even of opinion that "warned and discharged" if an acquittal be not implied in the phrase, is, as the decision of a Magistrate sitting to dispose of cases summarily, illegal.

If it be supposed to imply a conviction in which sense the Commissioner appears to interpret it, the Magistrate would in substituting a warning for a punishment be assuming to exercise a prerogative of pardon, which does not belong to his office. English Judges do not presume to exercise this prerogative, and, to avoid the appearance of doing so, record a sentence of nominal punishment as "fined one rupee with imprisonment till the fine be paid" and the like.

But to a verdict of conviction or acquittal, the prisoner charged before the Magistrate, exercising his summary jurisdiction, is entitled; a mere discharge would not protect him from a future prosecution for the same offence, and to this the Magistrate has no right to expose the prisoner by an incomplete dealing with the case.

It is different when the Magistrate takes evidence upon a case with a view of committing the prisoner for trial before a higher Court If, in such a case, the evidence does not appear to him to warrant a commitment, the prisoner is properly discharged.

It appears to me that the strictly correct entry in the case of Abdool would have been "acquitted, warned and discharged."

I am nevertheless bound to admit that this is not the view which my client took of the legal phraseology of the Police Office when he wrote his explanation to Government.

Stung by the pungent ridicule of the learned Commissioner, my client, feeling perhaps, that being a Hindoo, he was not so competent a Judge of the pertinence of expressions in the English language as his critic; believed that he ought to have written "warned and discharged" instead of "warned and acquitted" and thought that it must have been in the hurry of business, and merely by what he calls a slip of the pen, that he used the one phrase instead of the other.

Mr. Wauchope is a great stickler for verbal accuracy, and takes hold of the term "slip of the pen." He interprets it literally, and makes a good deal of the nice point (see the ninth paragraph

of his letter of the 27th of July) that the words "warned and" were written at a different time from "acquitted" and that consequently there can have been no "*slip of the pen.*"

If however my hypothesis be adopted that the Magistrate wrote "acquitted" first when Mr. Weskin observed that he had come to his decision, afterwards, having had some intermediate conversation with that gentleman, proceeded to give that warning to which Mr. Weskin speaks, and *then* interpolated the words "warned and" without at the same time altering the word "acquitted" it is hardly a stretch of the sense of that term "slip of the pen" to apply it to an inaccurate entry recorded under such circumstances.

I may further remark that all the witnesses present, when the Magistrate pronounced his decision, concur in stating that it was not given in English. One says that the words used were "*jao khalash*," another that they were "*jao moukhoof hoa*," and a third that the phrase used was "*maaaf keea*" of any one of them it appears to me that "discharged" would have been a translation quite as accurate as "acquitted" and that my client would be entitled to an acquittal on the charge now under notice, upon that account alone.

I am however desirous not to avail myself of any thing which has the faintest approach to a quibble, and therefore proceed to examine the bearing of my client's denial of having written "warned and acquitted" and to shew that he was not actuated by any disingenuous motive in denying that there were the words which he intended to use.

Mr. Wauchope's argument is that my client originally acquitted against the strength of evidence and that when aware that Mr. Wauchope's attention had been called to this, and that it was likely to be brought to the notice of Government, he endeavoured to make it believed that he really intended to have entered the words "warned and discharged" as implying thereby that he did not really acquit but *convicted* and pardoned.

This interpretation of the phrase is however due to Mr. Wauchope, and to him alone, and is not one which my client has even attempted to

put forward ; so far from his having ever insinuated that he convicted upon the evidence, we find him in the very letter in which he states that his intention was to write "warned and discharged" insisting upon the propriety of the acquittal in the following passage "*I cannot convict* prisoners against my own belief, not even to gratify the head of the Executive Police, nor can I persuade myself to pronounce them guilty of one offence, when sent up on another differing "*toto cœlo.*"

The whole of this passage has obvious reference to Abdool's case, where the accused had been sent up on a charge of theft, and it had been subsequently argued before the Magistrate that the offence really amounted to embezzlement or breach of trust.

Having advertence to this passage, it is quite clear that in asserting that his intention had been to use the words "warned and discharged" instead of "warned and acquitted" the native Magistrate had no intention to deceive Government into the belief that he had not in fact acquitted. It is plain that he was not writing in defence of the correctness of his judgment upon evidence, but of his aptness in applying terms.

I think it most probable that he really was persuaded at the time when he wrote to Government, that his intention had been at the time of Abdool's trial, to use the phrase "warned and discharged"; granting however for argument's sake that it might not be so, his attempt to make it believed that he was more an adept at legal phraseology than the use of the expression "warned and acquitted" was, in the opinion of the legal authorities of the Police Office supposed to denote ; his want of candor would be of the most pardonable character, a blunder in style or grammar, is what few writers can be brought to confess ingenuously.

I shall now close a Defence which must have severely tried the patience of the Commissioners.

In submitting it in writing rather than addressing the Court orally, I have been actuated solely by the consideration that the Act under which the Commission is constituted, forbids,

the Commissioners to record the defence, if made orally, and considering that the report of the Commissioners has to be submitted for the decision of His Honor the Lieutenant Governor, and not improbably referred by His Honor (under the 22d Section of the Act) to the Supreme Court, to which my client is officially subordinate, that it is obviously desirable that the defence should form part of the record.

I submit no evidence for the defence, because it is obvious that as it is not the duty of any body to inspect or make copies of the Magistrate's cases immediately after they are decided, it is impossible for us to produce any one who can speak to the actual state of the case book before Mr. Wauchope called for the copies of depositions.

My learned friend who conducts the prosecution has suggested that I have the power to call my client himself as a witness and have him examined upon oath.

It appears to me that to do so would be a piece of impudent bravado on the part of my client, as I am very clearly of opinion that should he make a false statement upon oath during the present enquiry, there would be no legal means of punishing him for perjury.

The Commissioners now sitting do not constitute in any sense a Court of Justice, having no power to pass any decision or sentence. And any indictment for perjury committed before the Commissioners must be laid under the Act itself under which the Commission issues.

The Act declares that witnesses giving false evidence before Commissioners may be prosecuted for perjury but though it carefully provides that the *prosecutor* may be examined as a witness for either prosecution or defence it nowhere makes any similar provision for the examination of the *accused*.

My friend very ingeniously argued that this Commission is a Civil proceeding, and that therefore, under the general provisions of the Act 2' of 1855 for amending the law of evidence, the defendant may be examined as a witness. It appears to me that this enquiry is more in the

nature of those which are termed criminal proceedings, the charges being as like an indictment at the Old Bailey as any document which I ever saw.

Moreover were there no doubt that my client could be examined I should hardly advise him to tender himself as a witness on his own behalf, as it appears to me that his denial on oath of the truth of the charges brought against him would add in a degree, hardly appreciable, to the weight of that denial, which he has already so emphatically given, in a manner which places his fortune, position in society and character at stake, while the fact of his being examined as a witness for the defence would enable my friend to call witnesses in reply.

JOHN NEWMARCH,
Counsel for the Defendant.

JUDGE, JUDGE & WATKINS,
Defendant's Solicitors.

J. T. Francis, Law Press, 8, Ranscmoody Gully.

In the Matter of the Articles of Charges

AGAINST

ROY KISSORYCHAND MITTRA.

WRITTEN DEFENCE.

JUDGE, JUDGE & WATKINS,

Defendant's Solicitors.

J. T. FRANCIS, LAW PRESS, 8, RANEEMOODY GULLY.

Sixth Day's Proceedings.

(Saturday, 9th October, 1858.)

Under Section XIX. of the Act Mr. Graham replied orally on the whole case.

Mr. Graham said he would proceed briefly to reply to the elaborate but specious written defence that had been put in. In the first place, he would correct a slight inaccuracy with regard to what was represented as having fallen from him in explaining, in his opening, how it was that the Government had not left the enquiry in the hands of Mr. Wauchope but had appointed a professional prosecutor. That had not been occasioned by the doubts referred to by Mr. Newmarch, but was owing to difficulties suggested in the construction of the 4th and 6th Sections, which provided a certain machinery for the working of the act, in the hands of a private accuser; and the uncertainty whether Mr. Wauchope, in his official position, properly could come within that description in the present case. He (the learned Counsel) would now come to the facts of the case as they appeared in the evidence. When a person was charged with the commission of certain acts of misconduct, when those charges were supported by sworn testimony, when the person so charged was invited to give an explanation, and when the law permitted him (as it undoubtedly did in the present case,) and the opposite party fully conceded to him the privilege of expurgating himself on oath, and he neglected to avail himself of that privilege, the world could put but one construction on such a course of proceeding. Somehow or other, mankind *had* a respect for the sanction of an oath; and if there was a controversy in which one side supported their statements by oath, while on the other such a confirmation were wanting, they would draw an inference as to the reason for that absence, which he feared, notwithstanding the special pleading of the defence in this respect, would be none of the plausible reasons of his learned friend. The defendant had been challenged, but had not dared to come forward to deny the charges made by Mr. Wauchope and supported by the testimony of himself and the other witnesses, and now sheltered himself under the excuse of his Advocate that he did not particularly remember the circumstances, and was therefore unable to give an explanation other than the conjectures made in the written defence. Now the Commissioners would bear in mind, as regarded this alleged loss of memory, that the cases had been decided on the 12th and 14th of June last. On the 16th the defendant had received a pretty good intimation that the matter would be inquired into. On the 28th, that is within a fortnight afterwards, he was called on by Government for an explanation, and the matter had in fact been in agitation ever since. He had never taken the defence

of loss of memory in the first stages of the affair, but had assumed the high ground of a total and absolute denial of the charges. Then, what was the substantive evidence in support of the charges? He (the learned Counsel) submitted it was all one way, coherent in all essential particulars and without contradiction. With regard to the alterations, and first of all the alterations in the Case Book relating to the affair of Lieut. Milligan, the Commissioners had before them on the one hand the clear, distinct, positive evidence of Mr. Wauchope. That was supported by the equally perspicuous account given by Mr. Roberts; both were confirmed by the incidental evidence of Mr. Wilkie, such as it was; they were confirmed by the underscored lines, made by Mr. Wauchope on his first sight of the interpolated depositions, before he saw the Case Book a second time; they were corroborated by the remarkable appearance of the Case Book itself which tallied with their strong impressions; lastly, it was no small corroboration of their statements that the defendant had not ventured, when the opportunity was afforded him, to come forward and deny on oath the charge, the truth or untruth of which must have been a matter resting in his own breast. He (the learned Counsel,) would now deal with a few of the fallacious arguments of the written defence. First of all, it was said that the whole case of the prosecution depended on memory. Yes, but what kind of memory? Was it simple, unassisted remembrance, or was it not rather recollection supported and confirmed by methods well known as efficacious aids of memory? It was in evidence that there was a continued and repeated examination of these cases by Mr. Wauchope and Mr. Roberts, and for a particular object assigned, viz., the discovery of some intelligible reason for the decisions. It was in evidence that the passages (which the remarkable appearance of the Case Book now proved must have been inserted with a different pen and a different ink, and at another time) exactly tallied with certain passages underscored in red ink by Mr. Wauchope, at the time when he first was struck with the circumstance, that the copy of the depositions sent him contained matter which had not appeared in the Case Book on his original inspection. Then it was contended for various speculative reasons, that what was termed the first test of Mr. Wauchope's memory, viz., his underscoring of the passages, had failed; and the learned Advocate of the defendant constructed a most ingenious theory which attempted to get rid of the whole of this very important link in the case, by supposing it to have been founded on a sort of dream or night-mare which had originally seized Mr. Wauchope, and of the truth of which Mr. Roberts had persuaded himself by constant intercourse. Would the Commissioners for an instant give place to so wild a speculation, in the face of the clear and positive evidence of men of strong and practical minds, such as Mr. Wauchope and Mr. Roberts? It was trifling with their patience to pursue such an enquiry.

Then it was urged that what was termed Mr. Wauchope's second test of memory had also failed, inasmuch as he had not relied in his present evidence on the circumstance mentioned in his 2nd letter to Government, to the effect that the Case Book, as regarded Lieut. Milligan's case, appeared to be fairly written out without interpolations. Now in point of fact Mr. Wauchope did expressly, as appears by the present evidence, insist upon it, that such was the appearance of the book on the occasion of his first inspection on the 15th June. He says expressly in his cross-examination—"I do adhere to the statements in my letter, wherein it is stated that there were no such alterations or interpolations in the two cases in question as to call for any particular attention." It was true that Mr. Roberts had not been cross-examined as to this, neither had his attention been directed to it in his examination in chief, and the defendant would have been entitled to the benefit of the omission, if he had directed his cross-examination to the point. Then the written defence proceeded to argue that it was admitted by the prosecution and must be assumed, that "if on inspection of the Case Book it appeared that there were alterations and interpolations other than those spoken to by the witnesses, that those must have existed on the 15th June, and that therefore the memory of Mr. Wauchope and Mr. Roberts must have failed them when they spoke to the Case Book having been then fairly written out." But in fact no such admission could for a moment be conceded, and the whole argument was founded on a fallacy. Because Mr. Wauchope and Mr. Roberts swore with precision to certain particular alterations which had fixed themselves with certainty on their minds, it did not by any means follow that they admitted the other alterations to have been originally in the book. On the contrary, they only professed to single out the passages which in the number of those apparently altered were such as they could not have any doubt about. Again great stress had been laid on a remark in Mr. Wauchope's letters, to the effect that he had casually looked over the rest of the Case Book and found that, except in the two cases reported, no material alterations and interpolations appeared. Now he was surprised to find that out of the whole Case Book the defendant, after the closest scrutiny, had been able to produce but three instances, viz. those marked J. K. and L., and what were those? They in fact proved that Mr. Wauchope's remark was not only substantially but almost exactly accurate, though expressed to be made upon a casual investigation. The instances on reference to them appeared to be no alterations at all in the sense, except in the instance J. which was an interpolation made evidently in the same slope of hand writing, at one and the same time. In the instance K. the alteration also appeared made at the same time, and the words struck out above were entered in the very next line *currente calamo* in the body of the text. The instance L. was a passage ending the text and written with a new pen,

but evidently part and parcel of the same entry at the same time. The whole effect therefore of these supposed alterations vanished. A further position taken in the written defence was a complete instance of the argument in a circle. It was contended that the Court would believe Mr. Weskins' statement, as to the reality of the warning, and the enquiry as to the prisoner's age in Lieut. Milligan's case; and if so, it was *probable*, on the principle of *omnia presumuntur*, that those matters would have been recorded by the Magistrate. That was an argument cutting both ways; for with as much conclusiveness he (the learned Counsel) might contend, that if the Court believed the charges as to the alterations, they would presume on the same maxim that the Magistrate had recorded at the time every thing material, and therefore that these matters not having been then included, Mr. Weskins' statements as to their existence were untrue. In like manner, the argument drawn from the *improbability* of the defendant taking the pains to procure his own conviction on these charges, as to interpolation by writing in different character of hand writing, and with different pens, would vanish, when the Commissioners bore in mind, that up to the 7th July, when the defendant wrote his letter to Government, he was ignorant of Mr. Wauchope's ever having seen the Case Book, and insisted in that letter that in fact he had been assured of the contrary. So that, it would be in such case immaterial in what character of writing the alterations and interpolations were made, and the circumstance of the difference could be the basis of no argument. Moreover the charge, had it been that of making the interpolations in a hand writing closely resembling the original text, would have been one savoring of something like forgery, which was quite different to that the subject of inquiry.

Then a great part of the defence had consisted of animadversions on Mr. Wauchope's supposed want of ingenuousness and candour in reference to the matters in question, and loud appeals had been addressed to him (the prosecutor) to make a fitting justification for various passages in Mr. Wauchope's letters, which had formed the subject of strong, but as appeared to him, quite undeserved comment. He alluded to the passages in the letters of the 22nd June, 27th July, and 16th June. Now he was not in the habit of urging his own private opinion, as having any bearing on a cause in which he happened to be engaged; but as the learned Counsel had so pointedly asked him for it, in reference to this part of the case, he would say, (though he did not appear there as the apologist of Mr. Wauchope, but in the interests of justice connected with this enquiry) that he considered Mr. Wauchope had in his evidence given a fair and candid explanation of those passages; explanations which every reasonable man would accept as putting his motives beyond question. As to the letter of June 22nd, and the omission in it of notice of the fact that he had, before its despatch, seen the Case Book

second time, Mr. Wauchope had fully explained that, by positively pledging himself that the underscoring in red ink on the depositions had been made *before* the case was seen the second time, and that the letter, tho' bearing a subsequent date, was drafted several days previously, and that inadvertently the corroboration was then not thought important enough to mention by an alteration of the already written letter, as it was never supposed that the *factum* of the alterations would be denied Then the passage in the letter of July 27th, as to "having lately seen the Case Book again" was explained by the simple consideration appearing on the evidence, that he had seen the Case Book not only on the second occasion before the despatch of the letter of June 22nd, (as seemed to be insinuated by the defence) but he had seen it once certainly, if not oftener *afterwards*. What became then of the comments on this part of the case? Add to these the instance of the letter of June 16th to the defendant, in which Mr. Wauchope requires the depositions and speaks of "some great misrepresentation on the part of the Police." He required the depositions, as a matter of course, as the basis of his complaint to Government, but it would have been in the highest degree indecorous and improper to have told the Magistrate on this occasion—"I am going to show you up to the authorities, and require you to send me a copy of the depositions." This was the sort of course which seemed to be insisted upon as the more candid. As to the allusion of 'misrepresentation' that would very reasonably be construed to be an invitation to explain what undoubtedly did appear to be a remarkable difference in their respective conclusions as to the guilt of the chokeedar He (the prosecutor) was at a loss to perceive any well founded reason for complaining of want of candour in these instances, but if such there had been, Mr. Wauchope would doubtless have to meet the accusation. He, (the prosecutor,) would now proceed to the other charges, viz., those relating to the unjust and improper determination of the two cases of Lieut Milligan's servant and Sumboonath Dhur, which had been met by a sort of demurrer, to the effect that the Commissioners could not take cognizance of them, in consequence of the law not suffering a Magistrate to be punished for wrong judgment in the absence of malicious or corrupt motive. He certainly was startled at the doctrine attempted to be drawn from the various authorities cited, and upon a reference to them he found them all inapplicable on a very plain ground, viz, that they related to applications for *criminal informations* against Magistrates. Now that constituted the widest possible difference in law, for every body knew that a criminal information was an extreme and rigorous proceeding, and that in legal practice there were the ordinary and milder remedies of an indictment or action at the suit of the person aggrieved. It was certainly an elementary position that Magistrates could not be criminally held liable except for gross or corrupt

conduct proceeding *ex mero motu*. But it must be obvious that the present enquiry was not in any way a criminal proceeding, neither was it in any degree analogous in law to a criminal information or indictment, or action. It in fact resembled the enquiries made in England, but oftener in Ireland, by the Lord Chancellor prior to the removal of a Magistrate from the commission of the peace. Therefore, though he did not consider the point could be properly entertained by the Commissioners, or one within their province on the present occasion, he was fully in a position to say, that nothing in law prevented a Magistrate being called on and bound to answer to such charges for such a purpose as the present enquiry.

Then what was the evidence? First in Milligan's case. If the Court believed the evidence of Mr. Wauchope and Mr. Roberts as to the alterations, they must find that the true record of the proceedings was that which appeared to those gentlemen on the 15th June when the book was written out fair, and the decision was simply *acquitted*; in other words the Case Book, as at present, *minus* the alterations and interpolations deposed to. Now the law being that a Magistrate must take down in writing and sign the deposition of every material fact, the presumption would be that the original, *i. e.* the real record did contain every material fact that transpired, and the onus would be on the defendant to shew that some material fact transpired which he omitted to include. Then, applying this proposition, does it appear, that any material fact was originally left out of the record? And if so, how does the defendant make out the truth of those two alterations and interpolations to which he has pointed this case, viz., the actual warning, and the answer to the question as to the prisoner's age? On the one hand there was against him the direct evidence of the two Inspectors, who attended the hearing of the case, who declared positively, not that they did not hear any warning or any question as to age, but that no such warning could have been, or was given, or question. True it was, they were but Police Officers, but respectable men for all that, till the contrary was proved, unless it was supposed the Commissioners would defer to a mere vulgar prejudice in doubting their testimony on such a ground. Moreover, the natural evidence in a case relating to affairs of the Police Office would be that of Police Officers. They had stood the able and ingenious cross-examination of the learned Counsel, without any thing transpiring to weaken their testimony, except those variances which attended all true evidence, and the absence of which was often the indication of previous collusion. If ever it was clear, it was in the present case, that the witnesses had not been drilled to tell the same tale, for on testing them they differed in a number of particulars the importance of which they could not estimate, and on which otherwise they would have been found to agree. On the other hand the defendant's assertion of the truth of the

ning, and the question as to age, was supported by one who called an *independent* witness, Mr. Weskins. Was he an *independent* witness? The Commisioners would have observed the alacrity with which he answered questions as to dialogues, even words, and the minutest details asked him on the of the defence; nay, he not only gave word for word was said by the defendant in warning and acquitting the it in Milligan's case, but till the learned Counsel for the dant saw the ridiculous character of such evidence and drop- he question, he was actually on the point of deposing at istance of four months to the very contents of each and ry deposition in that case, altho' he had been present merely a spectator. On the other hand, when questioned by the prosecution, the Commissioners would have noted his shuffling demeanour, fencing with the questions denying that he had ever a copy of the depositions, and insisting on the denial, then actantly admitting that he *had* seen an *extract from the Case* , and that sent to him by the defendant himself a month re this enquiry. Then again, when questioned as to what sed only two months ago at the interview at his Office with . Wauchope, he steadily persisted in denying a number of incents mentioned to him, which must have been in his memory more than the words and petty details of the event four nths before, which till Mr. Wauchope's visit he admitted never ing talked over with any one, and having forgotten. (The secutor here commented strongly on the bearing of this ess, and on the circumstance that though a great deal had made of the hardship of not calling him for the prosecon, he had in fact been subpœnaed by the defendant several s before those remarks, and had been in the hands of defendant's attorney, and had furnished his statement im two days previously to that and to the time when unicated with on the part of the prosecution.) Contrast- is readiness to give Mr. Wauchope the fullest corroborat the time of his visit, with his reluctance on the trial, dering the entire conflict of his testimony with that of Vauchope when recalled, *which* would the Commissioners re, (supposing them even men of equal credibility in respects,) Mr. Wauchope's account, which was consis- with his letter to Government written within two after that interview, or Mr. Weskins'? He contended in all respects in which they differed, and they differed oncilably, they must believe Mr Wauchope and discard Weskins. Then if this sole witness, on whom ded the assertion, that the Magistrate had but altered ecord in accordance with the truth, were considered thy of credit, what became of this part of the case? they disbelieve him when he contradicted Mr. Wauchope, lieve him when in another part of the same evidence he dicted other respectable witnesses? His statement had expressly negatived by the evidence of the two Inspec-

tors, and must fall to the ground. Then could it be said that the record, as seen on the 15th June, showed a just or proper decision of the case of Lieut. Milligan's servant? Reading it through, was it not on the contrary a total perversion of justice, if when a prisoner was on the clearest evidence guilty, and guilty too by his own admission, that he should be acquitted and allowed to go scotfree? Then in the other case of Sumboonath Dhur, the matter of complaint was not the wrong decision of the case, but the injustice and impropriety of fining the prosecutor 10 rupees for a false charge, without hearing the material eye-witness, who was present in Court ready to be examined. That he was such a witness, and that he was in Court, was proved by Inspector Ferris, and it appeared in evidence that the names of the witnesses are entered in the book, with the charge, prior to the case going before the Magistrate. What excuse had been assigned for this but the ingenious speculations of his learned friend, not however founded on facts? It surely could be called none other than an unjust and improper proceeding for a Magistrate to abstain from exhausting a cause brought before him, of all the material evidence then submitted to him; and still more unjust to fine a prosecutor 10 rupees without regarding the common honest rule for ascertaining the truth of his complaint. The prosecutor then adverted to the defendant's express denial in his letters to Government of the 7th July and subsequently, of the assertions of Mr. Wauchope as to the alterations which formed the subject of the 3rd and 6th charges, and inrespect of which, if the Commissioners believed Mr. Wauchope, the defendant must have stated what was untrue, and concluded by submitting that the entire case, on one and all of the several charges, had been fully established by the clearest testimony, and by corroborations of that testimony which placed it beyond the slightest suspicion of reasonable doubt.

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